

1 STATE OF MINNESOTA
2 COUNTY OF RAMSEY
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4 THE STATE OF MINNESOTA,
5 BY HUBERT H. HUMPHREY, III,
6 ITS ATTORNEY GENERAL,
7 and
8 BLUE CROSS AND BLUE SHEILD
9 OF MINNESOTA
10 Plaintiffs,
11 -vs- Case File No. C1-94-8565
12 PHILIP MORRIS INCORPORATED,
13 R.J. REYNOLDS TOBACCO COMPANY,
14 BROWN & WILLIAMSON TOBACCO CORPORATION,
15 B.A.T. INDUSTRIES P.L.C.,
16 BRITISH-AMERICAN TOBACCO COMPANY LIMITED,
17 BAT (U.K. & EXPORT) LIMITED,
18 LORILLARD TOBACCO COMPANY,
19 THE AMERICAN TOBACCO COMPANY,
20 LIGGETT GROUP, INC.,
21 THE COUNCIL FOR TOBACCO RESEARCH - U.S.A.,
22 INC., AND THE TOBACCO INSTITUTE, INC.
23 Defendants
24 - - - - -
25 DEPOSITION, LIGGETT GROUP (BENNETT LeBOW) VOL. II
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P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 (The following is the deposition of
2 Liggett Group (BENNETT LeBOW), taken pursuant to
3 the Second Amended Notice of Taking Deposition, at
4 the offices of Dorsey & Whitney, 250 Park Avenue,
5 16th Floor, New York, New York, commencing at
6 approximately 9:45 o'clock a.m., September 30,
7 1997.)

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1 APPEARANCES:

2 Also on Behalf of the Plaintiffs:
3 Robins, Kaplan, Miller & Ciresi
4 Roman M. Silberfeld
5 Suite 3700
6 2049 Century Park East
7 Los Angeles, California 90067-3283

8 On Behalf of Philip Morris Incorporated:
9 Dorsey & Whiteny
10 Paul R. Dieseth
11 Pillsbury Center South
12 220 South Sixth Street
13 Minneapolis, Minnesota 55402-1498

14 On Behalf of Lorillard Tobacco Company:
15 Doherty, Rumble & Butler
16 Peter T. Shimabukuro
17 2800 Minnesota World Trade Center
18 30 East Seventh Street
19 Saint Paul, Minnesota 55101-4999

20 On Behalf of the New York Plaintiffs:
21 Goodkind Labaton Rudoff & Sucharow
22 Hollis L. Salzman
23 Martis Ann Brachtl
24 100 Park Avenue
25 New York, New York 10011

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1 On Behalf of R.J. Reynolds Tobacco
2 Company:
3 Womble, Carlyle, Sandridge & Rice
4 Keith W. Vaughan
5 200 West Second Street
6 Post Office Drawer 84
7 Winston-Salem, North Carolina 27102
8 On Behalf of the State of Minnesota:
9 Brennan, Steil, Basting &
10 MacDougall, S.C.
11 Thomas J. Basting
12 One East Milwaukee Street
13 Post Office Box 1148
14 Janesville, Wisconsin 53547-1148

15
16 On Behalf of the Witness and Liggett
17 Group:
18 Kasowitz, Benson, Torres &
19 Friedman, LLP
20 Daniel R. Benson
21 Aaron H. Marks
22 1301 Avenue of the Americas
23 New York, New York 10019-6022
24
25

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1 On Behalf of Lorillard Tobacco Company:
2 Greenberg, Traurig, Hoffman,
3 Lipoff, Rosen & Quentel
4 Stephen L. Saxl
5 153 East 53rd Street
6 New York, New York 10022
7
8
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1 (Plaintiffs' Exhibits 1359-1362
2 were marked for identification.)
3 THE COURT REPORTER: We are on the
4 record.

5 BY MR. VAUGHAN:

6 Q. Mr. LeBow, let's begin with a few
7 more questions about Liggett's financial
8 situation.

9 Let me hand you what has been
10 marked as LeBow Exhibit number 1362, and ask you
11 if you can identify that document, please, sir.

12 A. It's a form 10-Q for June 30th,
13 1997, filed with the SEC.

14 Q. Is that the most recent form 10-Q
15 filed by Liggett?

16 A. Yes.

17 Q. Could you tell the jury what a 10-Q
18 is?

19 A. It's a result of the financial
20 condition of the company that we filed with the
21 SEC every quarter.

22 Q. Who prepares that document?

23 A. It's prepared internally by the
24 Liggett people.

25 Q. In the normal course of business,
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1 do you see the document before it is submitted?

2 A. Not in the normal course of
3 business, not normally, no.

4 Q. Do you at some point typically
5 review the documents?

6 A. Sometimes, but not all -- every
7 time.

8 Q. Is it important that the
9 information in the documents be accurate?

10 A. Yes.

11 Q. Why is it important?

12 A. Well, because that's all we do is
13 report the accurate information.

14 Q. Are there laws that require
15 companies to report that information accurately?

16 A. Yes.

17 Q. And are there strict penalties for
18 failing to accurately report the information?

19 A. If it's done deliberately, yes,
20 there are strict penalties. If it's done
21 accidentally, no, obviously.

22 Q. Okay. Could you hand me back the
23 document just a moment and let me flip to a page.

24 (Handing)

25 MR. BENSON: Is there another copy
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1 of the exhibit?

2 MR. VAUGHAN: No, several of the
3 ones that you have today, I do have copies of, but
4 this is the only copy I have of this one, unless
5 you all have one available. I think we delivered
6 copies to everyone before the deposition, but I
7 don't have an additional copy here.

8 BY MR. VAUGHAN:

9 Q. Does page 11, Mr. LeBow, include a
10 section entitled "Notes to Consolidated Financial
11 Statements"?

12 MR. BENSON: Let me just see the
13 document for a second.

14 I just want to note for the record,
15 this is not a copy of what was originally filed,
16 it's a copy that's a printout from some, you know
17 -- some computer printout of the document.

18 THE WITNESS: What was your
19 question again?

20 BY MR. VAUGHAN:

21 Q. My question, Mr. LeBow, is whether
22 there's a section on Section 11 entitled "Notes on
23 Consolidated Financial Statement"?

24 A. Yes, there is a section headlined
25 that.

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1 Q. What is that section intended to do
2 in form 10-Q?

3 MR. BENSON: Objection.

4 A. It's to give more information about
5 the financial statement.

6 BY MR. VAUGHAN:

7 Q. Under the note number one -- if you
8 could hand me back the document -- is there a
9 sentence that begins at the bottom of page 11 and
10 continues on to page 12 and, indeed, is part of a
11 paragraph that ends on page 12?

12 MR. BENSON: Objection.

13 A. That's pretty obvious. Why do you
14 ask me a question like that? There's a sentence
15 there, there's a sentence -- a paragraph on the
16 next page.

17 BY MR. VAUGHAN:

18 Q. Would you read that paragraph,
19 please, sir, for the record; in other words, read
20 it out loud.

21 A. Read it out loud?

22 Q. Yes.

23 A. "The company consolidated financial
24 statements have been prepared, assuming the
25 company will continue as a going concern. Liggett

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1 had net capital deficiencies of \$178,660 as of
2 June 30th, '97, is highly leveraged and has
3 substantial near-term debt service requirements.
4 Due to the many risks and uncertainties associated
5 with the cigarette industry and the impact of
6 tobacco litigation," quote -- paren, rather --
7 "See note 8," end paren, "There can be no
8 assurance the company will be able to meet its
9 future earnings or cash flow calls. Consequently,
10 the company could be in violation of certain debt
11 covenants, and if its lenders were to resolve its
12 right on revolving credit facility," in paren,
13 "the facility," end paren, "or the indenture for
14 senior secured notes," paren, "the Liggett notes,"
15 end paren, "or refused to lend under the facility,
16 the company would not be able to satisfy such
17 demands or its working capital requirements."

18 Q. And I believe you told us
19 yesterday, Mr. LeBow, that you're in the process
20 of trying to renegotiate some of those
21 arrangements --

22 A. Correct.

23 Q. -- but have not yet been successful
24 in doing so?

25 A. That's correct.

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1 Q. Is there a sentence that begins at
2 the bottom of that page that tells the reader what
3 happens in the event that you are unsuccessful?

4 MR. BENSON: Objection.

5 A. Yes.

6 BY MR. VAUGHAN:

7 Q. What does that sentence say?

8 A. Well, there's a whole paragraph
9 here.

10 Q. Okay. What does the paragraph say?

11 A. Want me to read it?

12 Q. Yes.

13 A. "The failure to pay interest on the
14 Liggett notes would permit the lenders under the
15 facility," capital F, "to cease making further
16 advances. While the lenders have continued to
17 make such advances and management currently
18 anticipates that they will continue to do so, no
19 assurances can be given in this regard. The
20 company is unable to restructure the terms of the
21 Liggett notes, extend the facility or otherwise
22 make all payments thereon within the applicable
23 grace periods. Substantially all of its long-term
24 debt in the facility would be in default and
25 holders of such debt could accelerate the maturity

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1 of such debt. In such event, the company may be
2 forced to seek protection from creditors under
3 applicable laws."

4 Q. Mr. LeBow, when it says you may be
5 forced -- the company may be forced to seek
6 protection from creditors under applicable laws,
7 is that -- does that mean file bankruptcy?

8 MR. BENSON: Objection.

9 A. Well, file for reorganization.

10 BY MR. VAUGHAN:

11 Q. Which is under the bankruptcy laws?

12 MR. BENSON: Objection.

13 A. File for the organization, yes.

14 BY MR. VAUGHAN:

15 Q. In filing for the organization, do
16 you do it under the bankruptcy laws?

17 MR. BENSON: Objection.

18 A. Yes.

19 BY MR. VAUGHAN:

20 Q. Now, the next sentence says what?

21 A. "These matters raise substantial
22 doubt about the company meeting its liquidity
23 needs and its ability to continue as a going
24 concern."

25 Q. So, the most recent 10-Q for
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1 Liggett indicates as a conclusion to the notes
2 that the -- these matters raise substantial doubt
3 about the company meeting its liquidity needs and
4 its ability to continue as a going concern?

5 MR. BENSON: Objection.

6 A. Well, since our settlement in March
7 of '96, our volume has fallen off significantly
8 for pretty obvious reasons.

9 Q. For whatever reason, as of June 30,
10 1997, the company had -- there was substantial
11 doubt about whether the company could continue as
12 a going concern?

13 A. One of the main reasons being
14 because our volume has fallen off sharply since we
15 did the first settlement back in March, 1996.

16 Q. Apart from how much the volume fell
17 off sharply or when it fell off sharply, as of
18 June, 1997, there was substantial doubt about the
19 company's meeting its liquidity needs and its
20 ability to continue as a going concern, right?

21 A. Unless we can renegotiate those
22 debts, correct, as of that point in time, due to
23 the fact our volume has fallen off sharply in the
24 past year and a half since the March, 1996
25 settlement.

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1 Q. And has the volume continued to
2 fall off?

3 A. It's stablizing somewhat now, yes.

4 Q. But you're still very much in debt?

5 A. The debt has not changed. We have
6 been paying our interest on time, though. That
7 was done on time. We are not in default of
8 anything as of right now.

9 Q. Let me show you now what we have
10 marked as LeBow Exhibit number 1359.

11 MR. SILBERFELD: Can I just
12 inquire, were these all marked before we went on
13 the record? That's why we hadn't heard about
14 them before?

15 MR. VAUGHAN: That's right, we
16 marked about three or four of them just to get a
17 start.

18 MR. SILBERFELD: Great. Would you
19 be good enough to identify them at some time with
20 the witness.

21 MR. VAUGHAN: Yes, I'm going to
22 have the witness do that right now.

23 MR. SILBERFELD: Thanks a lot.

24 BY MR. VAUGHAN:

25 Q. What is that exhibit, Mr. LeBow?

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1 A. A transcript of the deposition I
2 gave in the Broin case in Florida.

3 Q. And was that deposition taken on
4 June 24th of this year?

5 A. That's correct.

6 Q. Do you recall what your share of
7 the full -- of the full-price cigarette market was
8 in 1986 when you took control of the company?

9 A. No, I don't know exactly.

10 Q. Was it over three percent?

11 A. No.

12 Q. Well, as recently as 1991, did you
13 have a 3.4 percent share of the full price market?

14 A. Three point what?

15 Q. 3.4 percent.

16 A. Possibly, I don't know. I don't
17 think that's true.

18 Q. Do you know what your full-price
19 cigarette market was in 1992?

20 A. No, I don't know year-by-year these
21 numbers.

22 Q. Do you know if it had fallen to 1.4
23 percent?

24 A. I just said, I don't know these
25 numbers. You keep asking me these questions, I

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1 don't know year-by-year numbers.
2 Q. Turn, please, to turn page 275.
3 A. Of --
4 Q. The deposition. Mr. Grossman
5 conducted the examination on that day, did he not?
6 A. I don't know.
7 Q. Do you recall Mr. Ted Grossman?
8 A. Oh, yeah; yes.
9 Q. Do you recall him conducting the
10 examination?
11 A. Yes. I didn't recall his name.
12 Q. At the time he conducted this
13 examination, he presented to you certain 10-Ks,
14 did he not?
15 A. I don't recall.
16 Q. Would you look at page 275 of the
17 deposition?
18 A. Okay.
19 Q. See if that refreshes your memory
20 as to whether he was showing you 10-Ks.
21 A. It just says, "According to your
22 10-K," it doesn't say he gave me any 10-K. He
23 didn't give me anything.
24 Q. He asked you whether based on the
25 10-K, whether your share of the full-price
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1 cigarette market in 1992 was 1.4 percent, and you
2 indicated "Right"?

3 A. Where is that at?

4 Q. On 275.

5 MR. BENSON: Objection.

6 A. Give me a second to read this.

7 (Pause)

8 Well, he's making the statement
9 here that based upon my 10-K, the price -- the
10 market share in 1992, full-price market share is
11 1.4 percent. If we say that in the 10-K, that's
12 all I'm saying. He made the statement, I didn't
13 make this statement.

14 BY MR. VAUGHAN:

15 Q. Do you recall as the CEO of Brooke
16 Company, which owned through BGLS, the company
17 known as Liggett, that there had been a decline of
18 approximately two percent in the full-price market
19 share for brands of Liggett cigarettes from the
20 late 1980s, early 1990s through 1992?

21 MR. BENSON: Objection. He already
22 testified he doesn't know these numbers.

23 A. I don't know exactly those
24 numbers. I don't understand, you know, what the
25 relevance is.

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1 Our market -- our brands, our
2 full-price, as you call them, are not sold to
3 children, so we have no new customers. Our
4 customers are all 50 years of age and older, and
5 by definition, people do die and we do lose
6 customers, so since we are not replacing them with
7 children and new customers, yeah, you would expect
8 our brands to decline, they have been in decline
9 for 10, 15 years.

10 MR. VAUGHAN: Motion to strike the
11 nonresponsive portions.

12 BY MR. VAUGHAN:

13 Q. Mr. LeBow, my question to you is
14 very simple.

15 You were the CEO of Brooke Group
16 from 1986 through 1997, were you not?

17 A. Brooke Group, yes.

18 Q. And one of Brooke Group's primary
19 assets was Liggett Corporation through BGLS?

20 A. Right.

21 Q. Would it be fair to say that as a
22 businessman who was CEO of Brooke Group for that
23 10-year period, that you were generally aware of
24 whether there were declines in your full-price
25 cigarette brands during that period of time?

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1 A. Yeah, mine and other people's,
2 too -- lot of cigarette brands declined during
3 that period of time, the old brands, the ones that
4 are not sold to children. You sell to children
5 like Marlboro and Camel, like your clients Camel,
6 yes, they went up. When you're selling to
7 children, you pick up new customers. We do not
8 sell to children. Therefore, we do not pick up
9 any new customers, and by definition, our brands
10 have not been declining, yes.

11 MR. VAUGHAN: Motion to strike
12 again.

13 BY MR. VAUGHAN:

14 Q. My question to you simple is: Has
15 there been a decline?

16 A. Yes.

17 Q. And had the decline gotten to the
18 point of approximately 1.4 percent of the market
19 by the end of 1992?

20 MR. BENSON: Objection.

21 A. Well, according to your colleague,
22 Mr. Grossman, according to what he read from the
23 10-K, which I did not read -- it could be there, I
24 don't know -- according to what Mr. Grossman said
25 from my 10-K, that's what it says.

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1 BY MR. VAUGHAN:

2 Q. According to what is said here and
3 what Mr. Grossman read from your 10-K, did that
4 square with your general perception of what
5 happened in Liggett?

6 A. My general perception is -- was and
7 is, our full-price brands, our old brands, which
8 we do not sell to children, has been in decline
9 for many, many years, will continue in decline,
10 and we fully expect it to decline. Since you're
11 not selling to children, you have no new
12 customers. By definition, people don't live
13 forever.

14 Q. So, there was a decline?

15 A. I said that five times.

16 Q. Now, by 1995, had it dropped below
17 1 percent?

18 MR. BENSON: Objection.

19 A. Again, I don't have the numbers
20 handy. If you want me to make a phone call, I'll
21 get you the numbers exactly. Be happy to do that.
22 It's all public information. It could very well
23 be, but I don't know precisely.

24 Q. Now, you indicated that Liggett
25 does not sell to children.

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1 Liggett sells to whoever purchases
2 the cigarette products; is that right?

3 A. That's correct.

4 Q. And that Liggett, in fact, sells to
5 wholesalers, who then sell to retailers; is that
6 right?

7 A. Pretty much, yes.

8 Q. Can you agree that the market for
9 generic cigarette products had declined from about
10 close to seven percent in 1992 -- no, had declined
11 to close to seven percent in '92 from about 10
12 percent in '91?

13 MR. BENSON: Objection.

14 A. Which market, the overall market?

15 BY MR. VAUGHAN:

16 Q. Generic cigarettes, the
17 lower-priced cigarettes.

18 A. The entire market, the U.S. -- the
19 United States market; is that what you're talking
20 about?

21 Q. Liggett's market.

22 A. Liggett's market?

23 Q. Yes.

24 A. Again, I don't have the numbers.
25 You apparently have numbers I don't have.

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1 Q. Do you recall a roughly three
2 percent decline in generic brand cigarettes for
3 Liggett in the one-year period from 1991 to 1992?

4 MR. BENSON: Objection.

5 A. No, I don't recall. I don't
6 recall. I don't know.

7 BY MR. VAUGHAN:

8 Q. You indicated yesterday that
9 Liggett and Brooke have agreed to waive
10 attorney/client and related privileges; is that
11 correct?

12 A. That's correct.

13 Q. Have you agreed to -- do you recall
14 Mr. Grossman asking you questions about the extent
15 of the waiver in the most recent deposition he
16 took of you?

17 A. Vaguely.

18 Q. Let me show you, then, Exhibit --
19 LeBow Exhibit 1361.

20 MR. BENSON: Mr. Vaughan, can you
21 identify these exhibits so that we can identify
22 them in the stack you sent over, since we don't
23 have the numbers.

24 MR. VAUGHAN: I gave the witness
25 seated beside you a copy.

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1 MR. BENSON: It would be helpful if
2 you tell us to shorten the process of finding it.

3 BY MR. VAUGHAN:

4 Q. Is that a copy of a deposition,
5 Mr. LeBow, taken of you on July 18, 1997?

6 A. Yes.

7 MR. SILBERFELD: Can we just
8 inquire what case that is?

9 THE WITNESS: It's the Broin case,
10 I believe.

11 MR. VAUGHAN: No, it's Reynolds
12 Tobacco Company versus Liggett and Brooke Group.

13 BY MR. VAUGHAN:

14 Q. Would you turn, please, Mr. LeBow,
15 when you get your copy back from counsel, to page
16 109.

17 A. Okay.

18 Q. Do you recall Mr. Grossman asking
19 you in the deposition:

20 Question, "You waived all of your
21 privileges," and you answered, "Liggett's
22 privileges, yes"?

23 A. That's what it says.

24 Q. Well, did you give that answer, as
25 best you recall?

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1 A. Yes, I'm sure it's an accurate
2 transcript.

3 Q. Did he then ask, "All of Liggett's
4 privileges," and you answered yes?

5 A. Yes.

6 Q. And did he then ask, "How about
7 Brooke's privileges," and you answered, "And
8 Brooke's"?

9 A. Yes.

10 Q. And then he asked you, did he not,
11 "Are there any privileged lawyer documents that
12 you have withheld from the Attorneys General," and
13 you answered, "Not to my knowledge"?

14 A. Correct.

15 Q. And then he asked, "Are there any
16 privileged Liggett documents that you have
17 withheld from other Plaintiffs in this
18 litigation," and you answered, "Yes, other
19 Plaintiffs. What do you mean, other Plaintiffs";
20 is that correct?

21 A. That's what it says.

22 Q. And as best -- do you have any
23 reason to doubt the accuracy of that question?

24 A. No, I have no reason to doubt any
25 of this accuracy.

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1 Q. Did he then ask, "Plaintiffs with
2 whom you haven't settled," and you answered, "Yes,
3 we have not waived our privilege, my
4 understanding, for other Plaintiffs."

5 Is that correct?

6 A. That's correct.

7 Q. And he then asked to be sure, "So,
8 you have waived your privilege, not as a matter of
9 public health and not for the benefit of the
10 public, but, rather, for purposes of the
11 settlement; is that correct," and you answered,
12 "You know, I really don't know the answer to that,
13 I have to think about that"; is that correct?

14 A. Well, for example, I haven't waived
15 my privilege against RJR to you, and you're a
16 Plaintiff in this case. That's for sure, I didn't
17 waive my privilege to you.

18 Q. Was that a correct reading of the
19 question and answer?

20 A. Yes, it's a correct reading of
21 the -- what's on the deposition, yes.

22 MR. BENSON: Mr. Vaughan, I think
23 we have an agreement from the Plaintiffs in this
24 case that these questions and answers would be
25 admissible in this case, so, you know, for the

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1 purposes of getting this finished as soon as
2 possible, I really request that you do not go
3 through questions and answers that have been
4 already made.

5 MR. VAUGHAN: Well, we'll try to
6 proceed as quickly as we can. I don't think we
7 have that agreement. We had an offer to agree
8 from Plaintiffs' counsel, but I don't believe we
9 have a stipulation without condition with respect
10 to -- at least at this time, I don't believe we
11 do. If I'm mistaken, please correct me.

12 MR. SILBERFELD: Well, the offer I
13 made yesterday, and I think you are mistaken, at
14 least as to what I meant, if not what I said was,
15 we are prepared to stipulate that the prior
16 testimony of Mr. LeBow given elsewhere can be used
17 for all purposes in this action, but the only
18 sensible reason for making that stipulation on all
19 parties' parts is, if we don't have further
20 examination on the very same topics, so if you're
21 prepared to forego examination, then we're
22 certainly prepared to have all that prior
23 testimony used as if it was given in this case.

24 MR. VAUGHAN: I think what we
25 better do is proceed with the deposition for a

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1 little longer and see where we are and see whether
2 we can still reach that kind of agreement, and if
3 not, we can continue, but at this point, there are
4 some topics that we need to cover again, I
5 believe, with Mr. LeBow.

6 BY MR. VAUGHAN:

7 Q. Mr. LeBow, do you believe that
8 Liggett and Brooke have waived their
9 attorney/client privileges with respect to the
10 documents as to everyone?

11 MR. BENSON: Objection.

12 A. No, because there are certain
13 states we haven't settled with, for example.

14 BY MR. VAUGHAN:

15 Q. And until you settle with those
16 parties, you're not going to make those documents
17 and that information available to them, are you?

18 A. We are making it available to the
19 various courts we have settled with. That's what
20 we have done.

21 MR. BENSON: Objection.

22 BY MR. VAUGHAN:

23 Q. But until you settle, you don't
24 make those documents and information available, do
25 you?

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1 A. Until the courts and other areas
2 release them, they will be available to anyone.

3 Q. But your present policy is, until
4 you reach deals with those other parties, you do
5 not waive the privileges as to the documents; is
6 that correct?

7 MR. BENSON: Objection.

8 A. That's correct.

9 BY MR. VAUGHAN:

10 Q. Have you intended to waive your
11 privilege with respect to all of your
12 communications with the Kasowitz firm?

13 MR. BENSON: Objection.

14 A. No, I do not expect to do that.

15 BY MR. VAUGHAN:

16 Q. Why not?

17 A. Because that -- that doesn't relate
18 to public health, which is what we're talking
19 about here.

20 Q. Have you discussed with the
21 Kasowitz firm areas of communications between you
22 and them that might relate in some way to public
23 health or to the credibility of your position when
24 you start speaking about public health?

25 MR. BENSON: Objection.

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1 A. If it were to relate to public
2 health, I would waive the privilege on those
3 items, yes.

4 BY MR. VAUGHAN:

5 Q. Do you have correspondence from the
6 Kasowitz firm that relates to the settlement
7 agreement, either settlement agreement, the 1996
8 or the 1997 settlement agreement?

9 A. What sort of correspondence?

10 Q. That relates to strategy or legal
11 issues or factual issues.

12 A. There could be, I don't know. I
13 don't recall anything specifically.

14 Q. Have you intended to waive any
15 privileges as to those matters?

16 A. If they relate to public health in
17 those matters, I would waive them.

18 Q. What about the strategy in
19 negotiating the settlement?

20 A. Well, that's an economic strategy
21 sometimes, and also, you know, a competitive
22 strategy. I would not waive that, but I don't
23 know if there's anything in writing other than the
24 final document.

25 Q. Do you waive your privileges with
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1 respect to communications with the Kasowitz
2 attorneys insofar as preparation for depositions
3 is concerned?

4 A. We don't do any preparations. I
5 don't know what I'm waiving. I mean, I refuse to
6 be prepped by them.

7 In general, to waiving zero, I
8 hereby waive zero.

9 Q. Do you -- did you meet with the
10 Kasowitz attorneys at all yesterday afternoon
11 after the session?

12 A. After the session? Yeah, we had a
13 drink after the session.

14 Q. Did you talk about the deposition?

15 A. We met one of the other partners
16 and gave them a briefing what happened. There was
17 nothing confidential discussed.

18 Q. Which partner did you meet?

19 A. Mr. Kasowitz.

20 Q. Did you have any conversations with
21 Plaintiffs' counsel in this case?

22 A. No.

23 Q. Did you have any conversations with
24 your counsel about conversations they had had with
25 Plaintiffs' counsel?

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1 A. No, not that I recall.

2 Q. Prior to yesterday's deposition,
3 had you talked with your counsel, the Kasowitz
4 firm, as to what was going to occur during the
5 deposition?

6 A. For about two minutes in the car on
7 the way here.

8 Q. Prior to that day, in setting up
9 the deposition, had there been any conversations?

10 A. No.

11 Q. Was there ever any indication to
12 you of the types of questions you might be asked
13 by Plaintiffs' counsel?

14 A. Yeah, in the car on the way over,
15 there were a couple statements made.

16 Q. What did they tell you?

17 MR. BENSON: Objection.

18 MR. MARKS: Objection.

19 A. It's privileged, I don't waive that
20 piece.

21 MR. BENSON: Instruct you not to
22 answer.

23 A. Had nothing to do with public
24 health.

25 BY MR. VAUGHAN:

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1 Q. So, you refuse to answer that
2 question on the basis of attorney/client
3 privilege?

4 A. Because it does not relate to
5 public health.

6 MR. BENSON: I instructed the
7 witness not to answer the question.

8 BY MR. VAUGHAN:

9 Q. And you're agreeing with your
10 counsel's instructions?

11 A. I agree with my counsel, yes.

12 Q. Mr. LeBow, I want to take you
13 through portions of your direct examination or the
14 initial examination yesterday in this particular
15 case.

16 There is a transcript available
17 somewhere here -- I think your counsel has a
18 copy -- that you're welcome to use to refresh your
19 memory, if you need to do so.

20 I'm not going to go through it
21 line-by-line, but there are certain topics we need
22 to cover in that direct examination.

23 As I understand what you told the
24 jury yesterday, between 1986 and 1995, you
25 obtained certain limited information from Liggett

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1 counsel?

2 MR. BENSON: Objection.

3 BY MR. VAUGHAN:

4 Q. Is that correct?

5 A. Regarding what?

6 Q. Regarding smoking and health
7 issues.

8 A. Yeah, I pretty much obtained just a
9 very high-level summary of the litigations in
10 progress once in awhile.

11 Q. One of the things they told you, I
12 believe you said, was that there was no real issue
13 regarding liability, the company had never paid a
14 penny in 40 years?

15 MR. BENSON: Objection.

16 A. That's what they told me, yes.

17 BY MR. VAUGHAN:

18 Q. And all you had to go on at that
19 time is what they told you?

20 A. Correct.

21 Q. But, as it turned out, as of that
22 point in time, that was a true statement, wasn't
23 it?

24 MR. BENSON: Objection.

25 A. No, I don't think -- in hindsight,
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1 I don't think it was a totally true statement, no.
2 BY MR. VAUGHAN:

3 Q. How much had they paid out in
4 judgments or settlements in 40 years?

5 A. You mean, as far as payment?

6 Q. Yes.

7 A. That's not what they just told me.
8 You're separating two questions, two statements
9 here. I said there is no liability and we haven't
10 paid. Yes, they had not paid, but I believe now
11 in hindsight that there was definite liability.

12 Q. And there were liability to
13 individual Plaintiffs?

14 A. To lots of people, yes.

15 Q. Had Plaintiffs filed lawsuits to
16 that point?

17 A. Yeah, there were individual
18 lawsuits, you know, in progress.

19 Q. Had any of them recovered?

20 A. As far as payment, no.

21 Q. They also told you that there had
22 only been a few lawsuits?

23 A. Well, at that time during this
24 period, anywhere -- it varied year-by-year. It
25 could be anywhere up to a hundred.

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1 Q. Based on your review or whatever
2 you have reviewed, is it correct that as of the
3 time you talked to those attorneys, there were
4 only a few lawsuits?

5 A. Well, you're defining a "few" as
6 how many?

7 Q. However many you interpreted at the
8 time.

9 A. Approximately a hundred, plus or
10 minus fifty. If that's a few, what's what it is.

11 Q. Did they mislead you about the
12 number of lawsuits that were pending at a
13 particular time?

14 MR. BENSON: Objection.

15 A. No, that was accurate information.
16 BY MR. VAUGHAN:

17 Q. So, you agree it was accurate as to
18 approximately the number of lawsuits, and you
19 agree it was accurate as to how much the companies
20 had paid out?

21 A. Yeah, but that's not a measure of
22 liability, sir.

23 Q. But you agree those two parts of
24 what they told you was accurate?

25 A. From what they told me, yes, but
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1 again, that's not a measure of liability, what
2 they told me.

3 Q. What did they tell you specifically
4 with regard to liability?

5 MR. BENSON: Objection.

6 A. That these lawsuits -- that the
7 lawsuits that had been filed, the hundred or so,
8 were all probably that will be filed and no one
9 can win, that the industry's defenses of that
10 smoking is not addictive and smoking doesn't cause
11 any health problems was true and correct, and we
12 should not be -- I should not even be concerned
13 about it.

14 Q. And who told you that?

15 A. All the in-house and outside
16 lawyers.

17 Q. Was Mr. Murray one of those
18 lawyers?

19 A. Yes.

20 Q. When did he tell you that?

21 A. Off and on, many times.

22 Q. How many times?

23 A. I have no idea.

24 Q. Do you recall what years?

25 A. Off and on, every year.

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1 Q. Was there a particular occasion
2 each year you talked with Mr. Murray about
3 liability lawsuits?

4 A. No, no particular occasion.

5 Q. But your best recollection is,
6 about once a year?

7 A. No, I said -- no, I said off and
8 on, many times. I didn't say once a year.

9 Q. How many times during the year did
10 you talk with Mr. Murray?

11 A. I have no idea.

12 Q. What other legal counsel within the
13 company did you talk to about liability issues?

14 A. Pretty much, just Mr. Murray in
15 this area.

16 Q. Now, is it your testimony that
17 Mr. Murray told you that there was just no way
18 Liggett could lose a lawsuit?

19 A. He said -- well, let's go back --
20 not just Mr. Murray, it's public statements
21 from -- by Philip Morris, public statements by
22 your client, public statements by everybody,
23 constant public statements in the press and Wall
24 Street and everything else about the same issue,
25 so not just Mr. Murray, everyone is saying the

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1 same thing in the industry.

2 Q. My questions to you deal with what
3 your lawyers told you.

4 Now, are you telling this jury that
5 Mr. Murray as general counsel for Liggett told you
6 that there was no way Liggett could ever lose a
7 tobacco liability lawsuit?

8 A. No, he never said that
9 specifically, but he very clearly said that "We
10 have never paid a penny in 40 years, there's
11 preemption. Everyone's been warned," so forth and
12 so on, he never told me about the documents in our
13 files and other people's files -- that, he never
14 told me.

15 Q. Did he tell you he believed there
16 were good defenses to the lawsuits?

17 A. Yes.

18 Q. Did he tell you that the industry
19 could lose lawsuits?

20 A. He thought it very unlikely. I
21 mean, anything is possible in this world, but that
22 was a very unlikely process, had not happened in
23 40 years, and as you say, had had very good
24 defenses.

25 Q. Now, has Mr. Murray ever told you

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1 at a subsequent time that what he had told you
2 earlier was inaccurate?

3 A. As I said before, Mr. Murray quit
4 after I went and did the settlement without him.

5 Q. So, the answer is no, he hasn't
6 told you?

7 A. I have not spoken with him.

8 Q. What other attorneys within Liggett
9 did you talk to about liability issues between
10 1986 and middle of 1995?

11 A. Well, we had other in-house
12 attorneys at the Brooke level, not the Liggett
13 level -- Brooke level who were talking to
14 Mr. Murray and talking to the outside counsel,
15 which I was not talking to, and were reporting
16 back basically the same thing.

17 Q. Which attorneys are those?

18 A. Our general counsel at Brooke at
19 the time.

20 Q. Who was that?

21 A. One was Gina Sharpe, S-H-A-R-P-E.

22 Q. What was the first name?

23 A. Gina, G-I-N-A, Ms. She was general
24 counsel most of the time and she got involved to a
25 degree in some of these things and talked to the

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1 outside attorneys. She would be the primary one.

2 Q. Is she still with Brooke Group?

3 A. No.

4 Q. When did she leave?

5 A. About four years ago.

6 Q. Was she the general counsel --
7 general counsel for Brooke Group from '86 until
8 about four years ago?

9 A. Not '86, probably a little bit
10 later, but until about four years ago, yes. I'm
11 not sure exactly when she started.

12 Q. Who was the general counsel for
13 Brooke Group prior to Gina Sharpe?

14 A. Mr. Bromson, B-R-O-M-S-O-N.

15 Q. What was his first name?

16 A. Burton, B-U-R-T-O-N.

17 Q. Is he still living?

18 A. Yes.

19 Q. Do you know where he lives?

20 A. Yes.

21 Q. Where?

22 A. In Florida.

23 Q. Where in Florida?

24 A. Boca Raton.

25 Q. Is Gina Sharpe still living?

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1 A. Yes.
2 Q. Do you know where she lives?
3 A. She lives in Westchester
4 somewhere. I don't know the exact town --
5 Westchester County.
6 Q. Do you know where she is employed?
7 A. No, I don't know.
8 Q. Why did she leave the company?
9 A. We moved the offices from New York
10 to Florida and she didn't want to move.
11 Q. Who became general counsel at
12 Brooke Group after Gina Sharpe?
13 A. Mr. Lampen is general counsel now,
14 L-A-M-P-E-N.
15 Q. What is his first name?
16 A. Richard.
17 Q. Were there any general counsel's
18 for Brooke Group between Ms. Sharpe and Richard
19 Lampen?
20 A. Mr. Bell for a period of time was
21 in there, temporary general counsel for a year or
22 two, for a year or so.
23 Q. What was his first name?
24 A. Marc.
25 Q. Do you know where he lives?
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1 A. Mr. Lampen and Mr. Bell live in
2 Florida.
3 Q. Do you know where in Florida
4 Mr. Bell lives?
5 A. No, but you can reach him through
6 my office in Florida.
7 Q. Why did Mr. Bell leave the company?
8 A. He didn't leave, he is still there,
9 general counsel.
10 Q. What is his position in the
11 company?
12 A. He is assistant general counsel.
13 Q. So, you -- did you promote
14 Mr. Lampen above Mr. Bell or bring Mr. Lampen in?
15 A. I brought Mr. Lampen in.
16 Q. From where?
17 A. Another law firm in Florida.
18 Q. And he is still there?
19 A. He is still there.
20 Q. Why did Mr. Bromson leave the
21 company?
22 A. He retired.
23 Q. Now, it's your testimony that one
24 or more of these general counsels spoke with
25 Mr. Murray or other general counsel at Liggett
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1 concerning liability issues?

2 A. No, it's your statement. I said
3 Gina Sharpe did many times. I don't know about
4 Mr. Bromson, whether he got involved at all at the
5 time. This is early '86/'87, and I don't think he
6 got involved at all.

7 Q. Did Mr. Lampen?

8 A. Mr. Lampen has only been there a
9 couple of years, so to the extent he talked to
10 them, I'm not sure.

11 Q. How about Mr. Bell?

12 A. They probably had some
13 conversations, I don't know exactly.

14 Q. Do you know whether they had
15 conversations?

16 A. For sure, I don't know.

17 Q. Did Mr. Bell ever relate to you any
18 conversations he had with counsel at Liggett --

19 A. Yes.

20 Q. -- concerning liability issues?

21 A. Yes.

22 Q. When did he relate those
23 conversations?

24 A. I don't recall exactly when.

25 Q. Was it within the last year?

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1 A. No, last few years.
2 Q. What did he tell you?
3 A. I remember something -- one of them
4 telling me that, you know, these -- again, this is
5 back in the '95 area when I started getting very
6 suspicious about what's going in '95, they started
7 me that the outside counsel was getting very
8 concerned about some of this litigation. That's
9 the first time I heard them say that.
10 Q. This was in 1995?
11 A. In '95 sometime, yes.
12 Q. Now, the outside counsel he was
13 referring to at that time were the lawyers at
14 Mudge, Rose?
15 A. Correct.
16 Q. What did Gina Sharpe tell you that
17 she had learned from Liggett counsel concerning
18 liability issues?
19 A. Pretty much the same thing we were
20 hearing all along, nothing different. Again, this
21 was four years ago.
22 Q. Do you recall anything specifically
23 that she told you?
24 A. No, I don't recall anything
25 specifically.

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1 Q. Did she regularly report to you on
2 smoking and health liability issues with respect
3 to Liggett?

4 A. No, the only regular report I got
5 was from Joe Murray on a quarterly basis.

6 Q. Was that quarterly report, the one
7 you mentioned earlier in your examination --

8 A. Yes.

9 Q. -- that you requested from him?

10 A. I -- yes -- no, on a quarterly
11 basis, he would send a report in. Maybe it could
12 even have been a monthly basis, I'm not sure of
13 the basis, really, of just the status of the
14 various litigation, and then I asked for more
15 detail later on -- "later on" being like '95 when
16 I started to get suspicious, I wanted a lot more
17 detail.

18 Q. Up until 1995 when, as you say, you
19 became more suspicious, up until that time but
20 prior -- prior thereto all the way back to '86,
21 were you receiving monthly or quarterly reports on
22 litigation?

23 A. No. They just started, you know,
24 '92, '93, around that time period probably. I
25 didn't get them day one though.

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1 Q. Why did you start getting them in
2 '92/'93?
3 A. I don't recall why, but it just got
4 appended to a normal monthly report we got from
5 them. It was just an appendix, an exhibit.
6 Q. Did you read those reports?
7 A. Sometimes.
8 Q. How frequently would you read those
9 reports?
10 A. Well, we got them probably monthly,
11 maybe, you know, once a month maybe. Sometimes, I
12 wouldn't read them at all, I would be too busy,
13 because things were going well and I wouldn't even
14 bother.
15 Q. What additional information did you
16 ask Mr. Murray to provide you in '95?
17 A. Just some more detail on the cases,
18 about the issues, about preemption, addiction, et
19 cetera, et cetera, and he started giving me some
20 more detailed information.
21 Q. Once you received that additional
22 information, did you ask for any more?
23 A. I occasionally called him up and
24 ask him what he meant by this. I didn't ask for
25 more written information, no.

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1 Q. And he provided you the answers you
2 asked?

3 A. The best he could.

4 Q. I believe you also said that at
5 some point prior to '85, your counsel told you
6 that the Supreme Court was about to rule and later
7 did rule on a preemption issue?

8 A. '85?

9 Q. No, between '86 and '95.

10 A. Yes, sometime during then, they did
11 rule.

12 Q. And as far as you know, what they
13 told you with respect to the proceedings in the
14 Supreme Court and the rulings was accurate
15 information?

16 A. Say it again? Why would they --
17 they were just reporting what the Supreme Court
18 said.

19 Q. And as far as you know, they
20 accurately reported that information?

21 A. Yes.

22 Q. So the record is clear on this,
23 you've told us about the general counsel at Brooke
24 talking to some counsel at Liggett, and you've
25 told us about conversations you had with

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1 Mr. Murray.

2 Did you ever have, between 1985/'86
3 and 1995 when you became suspicious, any
4 conversations with any other inside legal counsel
5 at Liggett?

6 A. No, Mr. Murray was the only one I
7 ever talked to.

8 Q. Apart from the one meeting you had
9 with one of the outside counsel in connection with
10 the deposition conducted by Mr. Rosenblatt, which
11 I'll come back to in just a moment, apart from
12 that occasion, did you have any meetings or
13 telephone conversations with Mr. Kearney or
14 Mr. Decker or anyone with Webster, Sheffield or
15 Mudge, Rose?

16 A. I may have met him once, you know,
17 outside of Liggett at their offices. I guess
18 maybe we were talking about the time they were
19 leaving Webster, Sheffield going with Mudge, Rose,
20 just on a -- not on any detail basis.

21 Q. Did you discuss smoking and health
22 liability issues?

23 A. I don't recall. It's a long time
24 ago we talked about it.

25 Q. Did you receive written reports

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1 from them?

2 A. No.

3 Q. Is it fair to say that their
4 dealings were with Liggett?

5 A. Correct.

6 Q. Until the early 1990s, were there
7 any class action lawsuits that you're aware of
8 against the tobacco industry?

9 A. I have no detailed knowledge of
10 that.

11 Q. Are you aware of any?

12 A. Offhand, no.

13 Q. Are you aware of any lawsuits by
14 Attorneys General prior to the early 1990s?

15 A. No.

16 Q. Are you aware of any other types of
17 lawsuits on smoking and health issues against the
18 tobacco industry, other than individual lawsuits
19 prior to 1992-93?

20 A. I didn't follow it in detail, so
21 I'm not -- you know, I don't know.

22 Q. I believe you said in your earlier
23 examination, and correct me if I'm wrong, that
24 there were two times you focused on smoking and
25 health issues before 1995 when you became more

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1 concerned.

2 MR. BENSON: Objection.

3 BY MR. VAUGHAN:

4 Q. One of those was a -- when you were
5 deposed by Mr. Rosenblatt?

6 A. Uh-huh.

7 Q. And another time was when
8 Mr. Horrigan testified to Congress?

9 A. Correct.

10 Q. Now, at the time you were deposed
11 by Mr. Rosenblatt, you met one of the outside
12 counsel; is that right?

13 A. That's correct.

14 Q. Was it just one?

15 A. I believe so, yes.

16 Q. And do you recall which one it was?

17 A. Mr. Kearney, I believe.

18 Q. And was the preparation session for
19 that examination very much like the preparation
20 session for your examinations here?

21 MR. BENSON: Objection.

22 A. Totally different.

23 BY MR. VAUGHAN:

24 Q. You said that Mr. Kearney talked
25 with you about addiction.

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1 A. Yes.

2 Q. And I believe you said that you
3 told him that you were going to testify based on
4 your personal opinion about addiction at that
5 time?

6 A. Personal, yeah, history.

7 Q. And, in fact, you testified in
8 Mr. Rosenblatt's deposition about your personal
9 history?

10 A. Yes.

11 Q. And your personal history was that
12 you had smoked for a number of years and then you
13 had quit?

14 A. Correct.

15 Q. And once you had quit, you had
16 never gone back?

17 A. That's correct.

18 Q. And you also indicated in that
19 deposition that your personal opinion at that time
20 was that cigarette smoking was not addictive?

21 A. Based upon my personal experience.

22 Q. So, Mr. Kearney on that occasion
23 didn't put words in your mouth as to what to say
24 as to addiction, you testified on your personal
25 opinion?

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1 A. He told me what the industry's
2 position was, that it's never been proven, and so
3 forth and so on, and, you know, I just said what I
4 felt.

5 Q. I believe you also said that
6 Mr. Kearney talked to you about what the
7 industry's position was on causation?

8 A. Yes.

9 Q. And by "causation," we mean whether
10 smoking causes disease?

11 A. Correct.

12 Q. All right. Now, Mr. Kearney never
13 told you to lie, did he?

14 A. Correct.

15 Q. You had a personal view at that
16 time about whether cigarette smoking might cause
17 disease, didn't you?

18 A. Correct.

19 Q. And it's the same as your personal
20 view now?

21 A. Correct.

22 Q. But you were comfortable at that
23 time with the idea that apart from your personal
24 belief based on statistics, that causation had not
25 been proven scientifically, weren't you?

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1 MR. BENSON: Objection.

2 A. On a highly technical basis, one
3 can come to that conclusion. That's very highly
4 technical.

5 BY MR. VAUGHAN:

6 Q. And, in fact, towards the end of
7 your examination yesterday, you indicated that you
8 thought that was technically a correct position?

9 MR. BENSON: Objection.

10 A. Well, it started to become very --
11 no, I don't say that, but it's becoming very
12 untechnical. I mean, there have been some studies
13 lately saying that there is some causation. I
14 have seen some studies in the newspaper the past
15 few months.

16 BY MR. VAUGHAN:

17 Q. That's based on the newspaper
18 accounts?

19 A. Yes, newspaper accounts; yes.

20 Q. But, certainly, apart from what
21 you've read in the paper recently, and whether
22 that's true or not, you were comfortable back in
23 1993 when you testified in Mr. Rosenblatt's
24 deposition that causation had not technically been
25 proven?

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1 MR. BENSON: Objection.

2 A. I didn't say that in a deposition,
3 if I recall.

4 BY MR. VAUGHAN:

5 Q. Did you not say in the deposition,
6 "I don't know whether it causes" --

7 A. No, I said, I don't know the answer
8 to that.

9 MR. BENSON: Objection.

10 BY MR. VAUGHAN:

11 Q. And you were comfortable with that
12 answer at that time?

13 MR. BENSON: Objection.

14 A. Well, Mr. Kearney yelling at me
15 "It's never been proven, never been proven," and I
16 have my other side telling me, you know, all the
17 statistics, it seems to be pretty obvious that it
18 has been proven, again, from a statistical point
19 of view. Now, you want to get highly scientific
20 and technical, I'm not prepared -- I can't -- you
21 know, I'm not a scientist, I can't get highly
22 scientific and technical, so I decided to answer
23 that question as I don't know.

24 BY MR. VAUGHAN:

25 Q. And apart from the statistical
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1 relationship, you still don't know, do you?

2 MR. BENSON: Objection.

3 A. Again, I'm not a scientist. I'm
4 not going to answer a silly question like that.

5 BY MR. VAUGHAN:

6 Q. Because you're not a scientist, you
7 don't know, apart from what the statistics show?

8 A. No, at this point in time,
9 counselor, I think it's silly and a farce, and I
10 think it's been pretty well proven and I think
11 pretty much everybody in the scientific community
12 without detailed scientific proof, you know, have
13 agreed to this point.

14 MR. VAUGHAN: Okay. Motion to
15 strike.

16 BY MR. VAUGHAN:

17 Q. Whether you think it's a farce or
18 not, your basis for concluding whether it's a
19 farce is based on the statistics; is that correct?

20 MR. BENSON: Objection.

21 A. I'm wondering why your client is
22 agreeing that it does cause cancer, and so forth,
23 and the settlement agreement they signed, you
24 know, just back June 20th, they agreed to all
25 these things. They've admitted it, too. Why are

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1 you asking me, why don't you ask your clients?
2 They admit it.
3 MR. VAUGHAN: Motion to strike as
4 nonresponsive.
5 Would you read back the question,
6 please?
7 (Record read.)
8 MR. BENSON: Objection.
9 MR. VAUGHAN: Would you answer the
10 question, please?
11 THE WITNESS: I'm sorry, I didn't
12 hear it. I was preoccupied.
13 Would you repeat it again, please?
14 (Record read.)
15 MR. MARKS: Objection, asked and
16 answered.
17 A. Well, I'm also basing it upon the
18 fact that your clients have signed an agreement
19 saying, "Warning, cigarettes are addictive.
20 Tobacco smoke can cause -- can harm your
21 children."
22 THE COURT REPORTER: I'm sorry,
23 saying -- would you please repeat --
24 THE WITNESS: "Warning, tobacco
25 smoke can harm your children. Warning, cigarettes
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1 cause fatal lung cancer. Warning, cigarettes
2 cause cancer. Warning, cigarettes cause strokes
3 and heart disease. Warning, smoking during
4 pregnancy can harm your baby. Warning, smoking
5 can kill you. Warning, tobacco smoke causes fatal
6 lung disease in nonsmokers," and I can go on and
7 on, and this is an agreement signed by all the
8 major tobacco companies, including Philip Morris,
9 RJR Reynolds, Lorillard, Brown & Williamson and
10 U.S.T.

11 Now, why are you asking me these
12 questions what I think? They think the same
13 thing. And that's -- what's this based upon,
14 science or statistics?

15 BY MR. VAUGHAN:

16 Q. Are you finished with your answer?

17 A. I'm finished with my answer.

18 MR. VAUGHAN: Motion to strike.

19 BY MR. VAUGHAN:

20 Q. Now, Mr. LeBow, would you go to
21 page 98 of your deposition yesterday, please.

22 Do you see that page?

23 A. Yes.

24 Q. Do you see an answer that begins on
25 line six?

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1 A. Yes.

2 Q. And is that the answer you gave?

3 A. Well, let me read the questions
4 first.

5 (Pause.)

6 Yes, that's the answer I gave.

7 Q. And you say, in part, do you not,

8 "They were just arguing on a technical basis.

9 Well, it's never really been scientifically
10 proven, which is probably true, it's only been
11 statistically proven, but to me, the statistics
12 were pretty strong."

13 Is that what you said?

14 A. Correct.

15 Q. So, you acknowledged yesterday that
16 it's probably true that it has not been
17 scientifically proven, didn't you?

18 A. Well, I don't read all the
19 scientific literature, so I don't know hundred
20 percent for sure. That's why I use the word
21 "probably" there, but apparently, your clients
22 have already agreed to all this, on a piece of
23 paper they have signed saying that smoking does
24 cause all these horrible things, so they agree.

25 What did they base their belief on,

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1 statistics or science?

2 MR. VAUGHAN: Motion to strike the
3 nonresponsive portion of the answer.

4 BY MR. VAUGHAN:

5 Q. At the time that you were being
6 prepared by Mr. Kearney for your examination by
7 Mr. Rosenblatt, I take it it's fair to say that he
8 did not tell you anything about the causation
9 issue, other than the discussion of the industry
10 position that it had not been scientifically
11 proven, that they were only statistics?

12 MR. BENSON: Objection.

13 A. That's all I can remember.

14 BY MR. VAUGHAN:

15 Q. Now, do you remember anything else
16 about Mr. Kearney's preparation of you for that
17 deposition?

18 A. No, this is like four or five years
19 ago, so I don't recall the details.

20 Q. In fact, you proceeded to testify
21 in that deposition and answer questions that were
22 put to you by Mr. Rosenblatt, didn't you?

23 A. Yes.

24 Q. Let me have -- show you this next
25 exhibit. It's LeBow Exhibit number 1360. It's

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1 the deposition of Bennett LeBow on Friday,
2 November 5, 1993.

3 MR. MARKS: Could we take a
4 two-minute break?

5 MR. VAUGHAN: Yes.

6 THE COURT REPORTER: We are back on
7 the record.

8 BY MR. VAUGHAN:

9 Q. Mr. LeBow, we just took a few
10 minutes' break, after I handed you -- did you get
11 that so far -- Mr. LeBow, we had just taken a few
12 minutes' break after I had handed you your
13 deposition taken by Mr. Rosenblatt; is that
14 correct?

15 A. Yes.

16 Q. And that break was called by your
17 counsel; was it not?

18 A. Yes.

19 Q. During that break, did your counsel
20 speak with you concerning the deposition?

21 A. No.

22 Q. Did he speak with you concerning
23 this deposition?

24 MR. BENSON: Objection.

25 A. No.

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1 BY MR. VAUGHAN:

2 Q. There was no conversation with
3 either of your counsel concerning the deposition
4 during that break?

5 MR. BENSON: Objection, instruct
6 the witness not to answer.

7 THE WITNESS: Which deposition --
8 sorry.

9 BY MR. VAUGHAN:

10 Q. Do you agree to follow your
11 counsel's instruction?

12 A. Yes.

13 Q. Is that because you do not intend
14 to waive the attorney/client privilege?

15 A. Regarding -- this is not a public
16 health issue, it's a deposition.

17 Q. And therefore, you are not going to
18 waive the attorney/client privilege?

19 A. At this point, yes.

20 Q. You indicated yesterday and some
21 today your interest in public health; is that
22 right?

23 A. Yes.

24 Q. In 1993, you weren't interested in
25 public health, were you?

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1 MR. BENSON: Objection.

2 A. I wasn't focused on it.

3 BY MR. VAUGHAN:

4 Q. You weren't even interested in it,
5 were you?

6 A. I had -- as a father and
7 grandfather, I had interest in it, yes.

8 Q. When Mr. Rosenblatt took your
9 deposition, if you will turn to page 43 of that
10 deposition, he asked you, did he not, beginning at
11 line eleven, "If I asked you, does smoking cause
12 lung cancer," and you answered immediately, "I
13 don't know"?

14 A. I don't know how immediate it was.
15 It doesn't say that here.

16 Q. Well, it has the lines that
17 indicated that the question wasn't complete, but,
18 in any event, he asked you the question, "If I
19 asked you, does smoking cause lung cancer," you
20 answered, "I don't know"?

21 A. Yes.

22 Q. And then he asked you, question,
23 "Okay. And you really don't care," didn't he?

24 MR. BENSON: Objection.

25 A. That's what it says.

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1 BY MR. VAUGHAN:

2 Q. He went on to say, "Because you're
3 selling a legal product"; is that right?

4 A. Yes.

5 Q. And you answered, "Correct"?

6 A. Well, the "correct" refers to
7 selling a legal product, not that I don't care.

8 Q. You were only answering half of his
9 question?

10 A. That's apparently what I did, yes.

11 Q. He asked you the question. "Okay.
12 And you really don't care because you're selling a
13 legal product," and you answered, "Correct"?

14 MR. BENSON: Objection.

15 Mr. Vaughan, you have to read the transcript as
16 it -- if you're going to refer to the transcript,
17 you should read the whole passage.

18 A. The question was broken into two
19 parts.

20 MR. BENSON: In the middle of the
21 question, there was an objection by Mr. Kearney.

22 MR. VAUGHAN: Mr. Benson, I would
23 respectfully suggest that that's not -- objections
24 that are designed to instruct the witness how to
25 answer the questions are not proper under these

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1 case management orders.

2 THE WITNESS: Let me just say for
3 the record, I was about to say the same thing he
4 said. I'm reading, I saw the same exact thing,
5 that it's been broken into two parts. I was
6 pretty much just answering the last part of it.

7 MR. BENSON: And I'm not telling
8 the witness how to answer it, I'm asking you to
9 ask a proper question, Mr. Vaughan.

10 BY MR. VAUGHAN:

11 Q. So, at that time, it's your
12 testimony -- so it's your testimony today that as
13 of that time, you were concerned?

14 A. Yes.

15 Q. In that case, let me ask you to
16 turn your attention, please, sir, to page 124 of
17 the deposition.

18 Beginning at line seven, you were
19 asked by Mr. Rosenblatt, were you not. "Okay.
20 Let me show you a Wall Street Journal article, a
21 front-page article that appeared February 11th,
22 1993, the title of which is: How Cigarette Makers
23 Keep Health Questions Open Year After Year. The
24 Council for Tobacco Research is billed interested,
25 but guided by lawyers, and all I'm asking you

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1 initially is whether or not you remember seeing
2 this article and whether you read it. Don't pay
3 any attention to my notes," and you answered, "I
4 don't remember at all"; is that correct?

5 A. Yes.

6 Q. And then he asked you, didn't he,
7 "You don't remember seeing that," and you
8 answered, no; is that right?

9 A. That's what it says.

10 Q. And then he asked you, did he not,
11 "Okay. Well, just read like to yourself the
12 first, you know, two or three paragraphs. It
13 still doesn't really ring a bell to you that you
14 ever saw this before"?

15 A. Correct.

16 Q. And you answered, "No, I'm out of
17 the country a lot. It could have appeared some
18 day I was out of the country"; is that right?

19 A. That's what it says.

20 Q. Do you have any reason to believe
21 you didn't give that answer?

22 A. No, I gave that answer, I'm sure.

23 Q. And then the next question he asked
24 was, "Basically, the thrust of that article is
25 that the Council for Tobacco Research was an

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1 entity set up by the tobacco industry to bury
2 scientific evidence which showed the link between
3 smoking and cancer and other diseases," did he
4 not?

5 A. Yes.

6 Q. And you answered, "That's the
7 thrust of the article"; is that right?

8 A. That's what it says.

9 Q. And the question he then asked was,
10 "That's the thrust of the article, and it is
11 obviously, as I'm sure you would agree, if you
12 want to take the time to read it, it is very
13 negative toward the tobacco industry," and he went
14 on to say, after an objection by Mr. Kearney, "So,
15 my question to you is: If you had read it, what,
16 if anything, would you have done," and that was
17 his question, wasn't it?

18 A. That was his question.

19 Q. And your answer was, "Nothing";
20 wasn't it?

21 A. Correct.

22 Q. And then he went on to say, "And,
23 really, that is pretty much -- would be your
24 policy, even if you read thoroughly an article in
25 the Wall Street Journal or the New York Times or

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1 The Miami Herald, that no matter how negative it
2 was toward the tobacco industry or no matter how
3 strongly worded an article might be as to the
4 scientific relationship as between smoking and
5 cancer, you would read it and then go on about
6 your business"; is that what he asked you?

7 A. That's what he asked me.

8 Q. And then you answered "Correct"?

9 A. Uh-huh.

10 Q. And then he said, "Okay." And you
11 answered, "Or I may not even read it"; is that
12 correct?

13 A. Yes.

14 Q. And then if I could turn your
15 attention, Mr. LeBow, to page 88 of the deposition
16 --

17 A. Shouldn't be skipping all over.

18 Q. Are you having trouble finding the
19 pages?

20 A. No, I found it. I can count.

21 Q. Without going through it
22 question-by-question, unless you wish to do so,
23 would you read page 88, and I will ask you just
24 generally whether Mr. Rosenblatt was asking you
25 some questions at that time about the issue of

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1 environmental tobacco smoke or what he referred to
2 as secondhand smoke potentially causing disease?

3 A. Yes.

4 Q. And then he asked you, did he not,
5 at the end of that page, line twenty-two, and I
6 assume you don't have any knowledge on that
7 subject, and you answered, "I have no knowledge"?

8 A. Correct.

9 Q. And his question was, "No
10 knowledge," and you answered no; is that correct?

11 A. Correct.

12 Q. And then he asked you, "And
13 basically, no interest in acquiring any
14 knowledge"; is that right?

15 A. True.

16 Q. And you answered, "That is
17 correct"; is that right?

18 A. That's correct.

19 Q. And then he asked you, "As I
20 understand your position generally, that kind of
21 issue is somebody else's battle, and you're not --
22 and you're going to do your thing as long as it is
23 legal to do it," and you answered, "That is
24 correct"?

25 A. Correct.

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1 Q. And he then asked you, "And make as
2 much money as you can while you're doing it";
3 correct?

4 A. Correct.

5 Q. And you answered, "I'm a
6 businessman"?

7 A. Right.

8 Q. And then he asked you, "Which means
9 you make as much money as you possibly can selling
10 a legal product?

11 Answer, "Right"?

12 A. Yes.

13 Q. And then he said, "And it's not
14 your role as a businessman to get off into health
15 issues," did he not?

16 A. Yes, he did.

17 Q. And you answered, "That is
18 correct"?

19 A. Uh-huh.

20 Q. Now, I believe you said, Mr. LeBow,
21 that the second event that caused you to focus at
22 all on smoking and health issues from 1985 up
23 until sometime in 1995 -- 1986 to '95 was
24 Mr. Horrigan's testimony to Congress?

25 A. Uh-huh.

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1 Q. Is that right?

2 A. Well, the whole Congressional
3 hearing, yeah.

4 Q. Now, I won't take you through the
5 questions I asked you yesterday about that. Let
6 me just ask you these additional ones.

7 What Mr. Horrigan said to Congress
8 to the effect that, in his opinion, cigarette
9 smoking was not addictive --

10 A. Uh-huh.

11 Q. -- was consistent with what you had
12 said in your deposition with Mr. Rosenblatt about
13 whether cigarette smoking is addictive?

14 MR. BENSON: Objection.

15 BY MR. VAUGHAN:

16 Q. Wasn't it?

17 MR. BENSON: Objection.

18 A. Well, I just -- Mr. Rosenblatt's
19 deposition stated my personal experience with
20 cigarette smoking and addiction. I had quit --
21 took me about six weeks, it was a little bit hard,
22 but I had quit.

23 That was my personal experience,
24 not an experience built up like Mr. Horrigan, who
25 had been in the tobacco business -- that's your

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1 client, by the way. He was formerly president of
2 RJR Reynolds, your client. He had been there for
3 20 some odd years or more. He had built up all
4 his knowledge being in the tobacco business, which
5 I was not, so I believe Mr. Horrigan was speaking
6 with a lot more experience and knowledge of the
7 tobacco and tobacco business.

8 Q. And he expressed his opinion at
9 that time on behalf of Liggett that cigarette
10 smoking or nicotine was not addictive, didn't he?

11 MR. BENSON: Objection.

12 A. He had been at Liggett about six
13 months at that time. If you're talking about
14 experience, he was pretty much stating his RJR
15 experience, because that's where all his
16 experience came from. It did not come from
17 Liggett.

18 BY MR. VAUGHAN:

19 Q. Do you recall whether he was asked
20 at that hearing based on his experience as a chief
21 executive or was he simply asked, "Is
22 nicotine-smoking addictive"?

23 MR. BENSON: Objection.

24 A. I don't recall the exact words, but
25 it was pretty much, to answer the questions based

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1 on one's experience or knowledge. His knowledge
2 base and his experience base came from RJR
3 Reynolds, your client, sir, not from Liggett.
4 BY MR. VAUGHAN:

5 Q. And he testified that in his
6 opinion, it was not addictive, didn't he?

7 MR. BENSON: Objection.

8 A. Based on the experience and
9 knowledge he picked up at RJR Reynolds after 20
10 some odd years as president of RJR Tobacco.

11 BY MR. VAUGHAN:

12 Q. And as far as you know, that was
13 his opinion, wasn't it?

14 MR. BENSON: Objection.

15 A. Based upon his experience and his
16 knowledge that he picked up at RJR Tobacco, yes.

17 BY MR. VAUGHAN:

18 Q. And you had no trouble with that
19 opinion at the time it was rendered, did you?

20 MR. BENSON: Objection.

21 A. No, I had a lot of trouble with it,
22 and I mentioned it. I mentioned it to some people
23 right after that, I was bothered by it. I was
24 bothered by it. I was bothered by the entire
25 Congressional hearing.

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1 BY MR. VAUGHAN:

2 Q. You said you had some general
3 discussions with Mr. Chakalian and someone else at
4 times and places you could not recall; is what
5 that you're talking about?

6 MR. BENSON: Objection.

7 A. No, I didn't say who. I don't
8 remember who, but some of my associates, I had
9 general discussions, yes. I don't remember
10 whether it was Mr. Chakalian or Mr. Ressler or who
11 exactly. I don't know.

12 BY MR. VAUGHAN:

13 Q. So, you -- these general
14 discussions where you expressed your concerns were
15 to -- were with people who you don't recall at
16 places you don't recall and at times you don't
17 recall; is that right?

18 MR. BENSON: Objection.

19 A. That's right.

20 BY MR. VAUGHAN:

21 Q. Do you recall what you said?

22 A. I said, it seemed kind of
23 ridiculous, everyone standing up saying smoking is
24 not addictive, when maybe people -- maybe it is,
25 something to that nature, and the whole tone of

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1 the entire -- we discussed the whole tone of the
2 entire hearings.

3 Q. And that was in 1994,
4 approximately -- well, less than a year after you
5 testified in Broin?

6 A. I testified on my personal
7 experience.

8 Q. And as far as --

9 A. And these gentlemen were testifying
10 on their extensive experience in the tobacco
11 business, which I did not have, and to this day, I
12 do not have extensive tobacco experience.

13 Q. At the time they testified, had
14 your experience with the issue of addiction
15 changed between November of 1993 and whatever date
16 in 1994 they testified?

17 A. I would -- I got concerned about
18 the entire hearing, not just -- not just them
19 raising their hand saying one thing, it's the
20 whole tone of the entire hearing. Many things
21 were said in that hearing by many Congressmen
22 which got me concerned, not necessarily to do with
23 addiction, dealing with many other issues, not
24 just addiction.

25 Q. Got you concerned about the future
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1 of the tobacco business?

2 A. No, got me concerned about, you
3 know, the whole public health issues that were
4 being brought out at this hearing.

5 Q. That hearing focused on addiction,
6 did it not?

7 A. If I recall, it focused on lots of
8 things, didn't just focus on addiction, no. That
9 was not a smoking-is-addictive hearing, it was a
10 tobacco hearing, period, and I watched the entire
11 hearing, if I remember.

12 Q. Did you watch it alone?

13 A. Probably.

14 Q. Was any action taken on the basis
15 of whatever concerns you expressed to these
16 unnamed persons?

17 MR. BENSON: Objection.

18 A. At the time, no.

19 BY MR. VAUGHAN:

20 Q. Did you put anything in writing
21 with respect to your concerns?

22 A. No.

23 Q. Did you contact the president of
24 Liggett at the time to discuss the issue?

25 A. I may have talked to Mr. Horrigan
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1 in general about the hearing afterwards. I don't
2 recall exactly. It's possible I did.

3 Q. Did you offer any criticism of what
4 he had said?

5 A. I don't recall.

6 Q. Do you recall talking with him, or
7 you just think you might have?

8 A. I just think I might have.

9 Q. Did you talk with Joe Murray about
10 the hearing?

11 A. Not that I recall, no.

12 Q. Did you talk with Mr. Kearney?

13 A. No, definitely not.

14 Q. Now, at that point in time, these
15 issues that had raised doubts in your minds about
16 the lawyers had not occurred, had it?

17 MR. BENSON: Objection.

18 A. That's correct.

19 BY MR. VAUGHAN:

20 Q. So, at that point in time, there
21 was no reason you could not have talked to
22 Mr. Murray or Mr. Kearney or any other lawyer with
23 respect to these issues, was there?

24 MR. BENSON: Objection.

25 A. Well, I never talked to

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1 Mr. Kearney. I mean, it was just my policy not to
2 talk to them.

3 BY MR. VAUGHAN:

4 Q. And there was no reason that you
5 couldn't talk to Mr. Murray or Mr. Kearney, was
6 there?

7 A. No, no legal reason why.

8 Q. And I believe you also said if we
9 proceed along in the chronology of things that you
10 testified about yesterday, that you got to a point
11 where you asked Joe Murray for some additional
12 information?

13 A. Correct.

14 Q. And you told us earlier today what
15 types of information that was that dealt with some
16 of the issues?

17 A. Uh-huh, correct.

18 Q. Did you ever ask him for any
19 additional information that he didn't provide?

20 A. That he refused to provide, or
21 something like that?

22 Q. Yes.

23 A. No, he always provided whatever I
24 asked him.

25 Q. And did he provide it promptly?

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1 A. Reasonably, yes.

2 Q. Was there ever a time that he
3 appeared in any way evasive in answering any of
4 your questions?

5 MR. BENSON: Objection.

6 A. Well, lots of times, he didn't have
7 answers, because sometimes, the questions were
8 very complicated and he didn't have the knowledge
9 or the answer, period.

10 BY MR. VAUGHAN:

11 Q. And it didn't surprise you that he
12 didn't have the answers to those questions at his
13 fingertips, did it?

14 MR. BENSON: Objection.

15 A. I didn't know enough about it to be
16 surprised or not surprised, and if I asked him
17 questions like this -- those types of questions
18 today, now that I am much more knowledgeable and
19 he didn't know the answers, I'd be surprised and
20 upset.

21 BY MR. VAUGHAN:

22 Q. But, at the time, his responses to
23 you were reasonable --

24 MR. BENSON: Objection.

25 BY MR. VAUGHAN:

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1 Q. -- as you saw it?

2 A. Again, not being knowledgeable at
3 the time, could come to no other conclusion.

4 Q. Now, have you told us all
5 information you had received about smoking and
6 health issues between '86 and when you became
7 concerned in '95 that you requested from any
8 counsel or received from any counsel?

9 MR. BENSON: Objection.

10 A. Best of my knowledge, yes.
11 BY MR. VAUGHAN:

12 Q. Now, Mr. Murray had been general
13 counsel with Liggett for 20 years?

14 A. I don't know exactly how many
15 years.

16 Q. Well, do you recall it being for
17 quite a period of time?

18 A. Yes, quite a period of time.

19 Q. And Webster, Sheffield, later,
20 Mudge, Rose, the lawyers, at least, had been the
21 counsel for Liggett for 30 years?

22 A. Many years. I don't know exactly
23 how many.

24 Q. And as far as you know, as far as
25 you believed at that time, at least, all of the

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1 information that Mr. Murray -- that you had
2 requested of Mr. Murray, he had provided?

3 A. To the best of my knowledge at the
4 time, yes.

5 Q. And to the best of your knowledge
6 at the time, the outside lawyers, Webster,
7 Sheffield, later, Mudge, Rose, had successfully
8 defended all the cases up until that point?

9 MR. BENSON: Objection.

10 A. To the best of my knowledge, yes.
11 BY MR. VAUGHAN:

12 Q. You never asked for any more
13 information from anyone at the company that you
14 didn't get?

15 A. That's correct.

16 Q. And no one in management at Liggett
17 or any level of the company, whether management or
18 otherwise, ever came to you and expressed concerns
19 about the company's position on smoking and health
20 issues?

21 MR. BENSON: Objection.

22 A. That's correct.

23 BY MR. VAUGHAN:

24 Q. Now, against that background, I
25 believe you said there were two reasons for

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1 concern that developed in September of '95?
2 A. In my mind, yes.
3 Q. Number one, you were approached by
4 your outside counsel, I believe you said
5 Mr. Kearney?
6 A. No, not directly. I mean, through
7 Mr. Murray.
8 Q. Through Mr. Murray?
9 A. Through him.
10 Q. Okay. About their joining another
11 firm?
12 A. Correct.
13 Q. And you understood from Mr. Murray
14 that the reason they were joining another firm is
15 because Mudge, Rose was collapsing?
16 A. Correct.
17 Q. And this core group of lawyers that
18 had represented Liggett for maybe 30 years
19 successfully needed a new home?
20 A. Correct.
21 Q. And you were asked for your
22 consent?
23 A. Correct.
24 Q. And Mr. Murray had no problem with
25 that request?

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1 A. What, asking me for my consent?
2 Q. That's right.
3 A. No, he had no problem with that.
4 Q. And he had no problem with granting
5 consent, if it were left to him, did he?
6 A. He probably would have granted
7 consent, absolutely, but it wasn't left to him.
8 Q. What they wanted to do was join the
9 firm of Latham & Watkins; is that correct?
10 A. That's correct.
11 Q. And Latham & Watkins was a very
12 respected national law firm, wasn't it?
13 A. I didn't know them that well.
14 Q. You had no reason to doubt their
15 abilities or integrity, did you?
16 A. At the time, no.
17 Q. Did you ask Mr. Murray his opinion
18 about Latham & Watkins?
19 A. No.
20 Q. Did you ask your general counsel at
21 Brooke about that person's opinion concerning
22 Latham & Watkins?
23 A. No.
24 Q. Now, I believe you said you had
25 tried to direct them instead to the Kasowitz
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1 firm --
2 A. Correct.
3 Q. -- because you knew the senior
4 partners at the firm?
5 A. Yes.
6 Q. And you knew them to be a products
7 liability firm?
8 A. That's correct.
9 Q. You didn't know one way or the
10 other whether Latham & Watkins was a products
11 liability firm?
12 A. No, I knew that Latham & Watkins
13 was not -- was not primarily a products liability
14 firm. I knew that pretty much for a fact.
15 Q. Where did you get that information?
16 A. Because I had known that they were
17 a corporate firm pretty much. I dealt with them,
18 you know, on occasion, so I knew they were pretty
19 much corporate and bankruptcy law.
20 Q. Who were the senior partners you
21 knew?
22 A. Mr. Kasowitz and Mr. Friedman at
23 that time.
24 Q. Let me show you --
25 A. And they had done a lot of work for
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1 me in the past, the Kasowitz firm.

2 Q. Let me turn your attention to the
3 deposition Mr. Grossman took. If you will hand me
4 the depositions, then I will tell you which
5 exhibit number it is.

6 I believe it's Exhibit number 1359.

7 A. Which one?

8 Q. 1359.

9 A. Okay.

10 Q. Turn, please, to page 62 of that
11 deposition.

12 You were asked in that deposition,
13 were you not:

14 Question, "You are currently
15 represented in smoking and health matters by the
16 Kasowitz, Benson firm," and you answered, "That's
17 correct"; is that right?

18 A. Yes.

19 Q. Then you were asked, "Can you
20 identify the lawyers at Kasowitz, Benson with whom
21 you are most familiar," and you answered,
22 "Mr. Kasowitz, Mark Kasowitz and Mr. Dan Benson";
23 is that right?

24 A. That's right.

25 Q. Then you were asked about

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1 Mr. Michael Faye sitting near you, and you added,
2 Michael Faye and Aaron Marks; is that right?

3 A. Correct.

4 Q. And you were asked, "And Ken
5 Striker," and you answered, "And who"?

6 A. Uh-huh.

7 Q. And the question was, "Ken
8 Striker," and you answered, "I don't know"?

9 A. Correct.

10 Q. And then Mr. Faye said it was
11 "Stricker."

12 The question then was asked, "The
13 Kasowitz firm was a long-time counsel for you in
14 matters other than smoking and health"?

15 A. Correct.

16 Q. And you answered no, didn't you?

17 A. Correct.

18 Q. And the question -- next question
19 was, "When did they become your counsel," and you
20 answered, "When we initiated this first settlement
21 back in '96"; is that correct?

22 A. That's what it says.

23 Q. And then you were asked, were you
24 not, "They became your counsel sometime before the
25 settlement. They participated in the negotiations

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1 leading to the settlement," and you answered,
2 "Yes, obviously"; is that right?

3 A. Yes.

4 Q. And then you were asked, were you
5 not, "And, in fact, you have been widely quoted as
6 saying that as of December 7, 1995, you had agreed
7 to their proposal to negotiate on your behalf; is
8 that correct," and you answered, "They came to
9 me -- they came to me and asked me, you know,
10 would I be interested in negotiating with the
11 other -- with the Plaintiffs, and I said yes in
12 December of '95. That was the first time they
13 were authorized to conduct negotiations."

14 Is that the answer?

15 A. That's correct.

16 Q. And then you were asked, were you
17 not, "And it was their proposal," and you
18 answered, "There was no proposal, it was just a
19 proposal to negotiate; is that the question," and
20 then you were asked, "Yes, it was their proposal
21 to negotiate," and you answered, "Yes, it was
22 their proposal to negotiate"; is that right?

23 A. Uh-huh.

24 Q. And then you were asked, were you
25 not, "Had they represented you or any of your

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1 entities prior to that," and you answered, "Not
2 that I recall"; is that correct?

3 A. Correct. Well, what happened --

4 Q. And then -- and then you were
5 asked, were you not, "How did they come to you to
6 suggest to you that you negotiate with the
7 Plaintiffs' lawyer," and you answered, "One of
8 their recent partners, an individual who had just
9 recently joined their firm, had represented me at
10 another firm."

11 Question, "And who was that?"

12 And you answered, "David or
13 Dr. David Friedman or Friedman"; is that correct?

14 A. That's correct.

15 Q. And the question was, "At what firm
16 had he represented you," and the answer was, "At
17 Mudge, Rose"?

18 A. Correct.

19 Q. Question, "And he introduced you to
20 Mr. Benson and Mr. Kasowitz," and you answered,
21 "That's correct"?

22 A. That's correct.

23 Q. And the question was, "And
24 Mr. Benson and Mr. Kasowitz made the proposal?"

25 Answer, "Mr. Kasowitz did, yes."

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1 Mr. Benson was involved, too, yes"; is that
2 correct?

3 A. That's correct.

4 Q. Now, in the course of these
5 conversations when Mr. Murray approached you about
6 these long-time counsel for Liggett joining
7 Latham & Watkins, you were told that PM was
8 willing to pay -- "PM" meaning Philip Morris --
9 was willing to pay the legal fees; is that what
10 you said?

11 A. Only after I said they go to
12 Kasowitz, Benson instead, not before that
13 happened.

14 Q. And you said you couldn't
15 understand why Philip Morris would pay your legal
16 fees?

17 A. Correct, or would want to pay my
18 legal fees.

19 Q. Did you ask Mr. Murray that
20 question?

21 A. Probably.

22 Q. Wasn't it true, Mr. LeBow, that
23 there was concern about whether Liggett could
24 provide the necessary funds to successfully defend
25 itself in the increasing numbers of cases?

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1 MR. BENSON: Objection.

2 A. I never heard that concern. From
3 who -- concern from whom, amongst us or amongst
4 Philip Morris?

5 BY MR. VAUGHAN:

6 Q. Amongst yourself and amongst other
7 companies.

8 A. I don't know what the other
9 companies were thinking. Yeah, we were getting
10 somewhat concerned about the rising number of
11 cases, yes.

12 Q. And you were concerned, were you
13 not, about your ability to continue to fund a
14 legal defense for all those cases?

15 A. I wasn't concerned at that time,
16 no. Maybe -- would've become concerned later on,
17 but not at that time.

18 Q. Weren't there directions being
19 issued either from you or from management at
20 Liggett about trying to curtail the defense and
21 the costs of the defense for Liggett assumed by
22 Liggett's counsel?

23 MR. BENSON: Objection.

24 A. No one can curtail the defense, but
25 obviously, we wanted to cut costs, and we did

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1 successfully cut costs the year before. It put
2 things on pretty -- I think we had pretty much of
3 an agreement with the Mudge, Rose people in this
4 case when it was Mudge, Rose, you know, to have a
5 fixed amount of money per month paid out, period.
6 BY MR. VAUGHAN:

7 Q. And they were to do the best they
8 could with what that would cover?

9 A. That's correct.

10 Q. Did you also testify yesterday that
11 for a few years, Liggett had been paying eight or
12 nine million dollars a year in legal fees and was
13 piggybacking on the efforts of other companies?

14 A. Around the eight-million-dollar
15 level, yes.

16 Q. And it was becoming increasingly
17 difficult to fund that eight-to-nine-million
18 dollar level given Liggett's financial situation,
19 wasn't it?

20 A. Liggett's financial situation,
21 '94-95 we're starting to improve, but we were
22 funding it currently, it was being paid.
23 Currently, there were no issues.

24 Q. The defending smoking and health
25 cases, particularly with the Attorneys General

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1 cases and the Castano cases, had proven to be very
2 expensive, hadn't it?

3 MR. BENSON: Objection.

4 A. It had stayed at that same level
5 for quite a few years. It had been about that six
6 million, seven million, eight million dollar level
7 for us.

8 BY MR. VAUGHAN:

9 Q. And that's because you had kept it
10 at that level in terms of what you were willing to
11 spend; correct?

12 A. Correct.

13 Q. Even though the amount of
14 litigation had increased; correct?

15 A. Somewhat, yes.

16 Q. Now, certainly, Mr. LeBow, you were
17 concerned as being involved with one tobacco
18 company about other tobacco companies losing cases
19 and the possible avalanche of lawsuits, weren't
20 you?

21 A. Well, Liggett could not afford to
22 lose even one case, so I wasn't concerned about an
23 avalanche, I was concerned about any one case.

24 Q. Because the financial condition was
25 so precarious at that time?

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1 A. Any one case would bankrupt us. We
2 cannot write checks like the other guys can and
3 have done, just having paid fifteen billion
4 dollars out in a settlement recently to two
5 states. I mean, we could never be part of those
6 settlements, when they paid fifteen billion
7 dollars just now.

8 Q. Did you -- strike that.
9 Were you told of any conditions
10 that Philip Morris put on any offer to pay legal
11 fees, aside from a preference that the lawyers who
12 had represented Liggett for 30 years go to
13 Latham & Watkins?

14 MR. BENSON: Objection.

15 A. The only condition was, they could
16 cancel at any time with 30 days' notice or 60
17 days' notice, something like that, they could
18 cancel a payment, so it was not a guaranteed
19 payment. It was as long as we were good boys, so
20 to speak, and did the right thing, they would
21 pay.

22 That's the way I interpreted their
23 ability -- their 30-day cancellation clause in the
24 agreement.

25 Q. When you said, "As long as you were
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1 good boys," and what?

2 A. And did the right thing, that
3 they -- according to them, of course. Otherwise,
4 they could cancel the payment.

5 Q. Did they tell you what it took to
6 be a good boy and to do the right thing?

7 A. No, they didn't tell me in detail,
8 no, but I suspected certain things.

9 Q. But these were only suspicions that
10 you had?

11 A. I agree. I said before and I'll
12 say it again, when this happened, my suspicion
13 level went sky high.

14 Q. But you quickly concluded that if
15 they were willing to pay those legal fees, it
16 helped ease Liggett's financial burden, didn't it?

17 A. Yes, but it got my suspicion level
18 up to a point where I decided at that point in
19 time to start looking to, there's a lot more,
20 because I didn't believe this.

21 Q. And it helped Liggett successfully
22 defend its cases, because it provided more
23 revenues for Liggett to use in defending cases,
24 didn't it?

25 MR. BENSON: Objection.

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1 A. No; no, because it only went on
2 three, four, five months. It was a very short
3 period of time when we finally settled and they
4 terminated, and I was happy they did.

5 BY MR. VAUGHAN:

6 Q. Maybe my question wasn't clear. I
7 was not asking you how long it had gone on.

8 At the time you entered into this
9 arrangement, you knew as a businessman operating a
10 company that was in precarious financial condition
11 that money was going to be provided to help pay
12 the defense of your company in mounting
13 litigation, didn't you?

14 A. No; no, because I entered into that
15 agreement knowing full well -- by the way, we had
16 the right to cancel in thirty days -- knowing full
17 well I was really going to investigate what's
18 going on, now because this did not smell right,
19 period, end of subject. I did not like it. I did
20 not -- I did not, in my mind, anticipate it would
21 go on for a long period of time, so there were
22 very little, if any, financial considerations on
23 our side involved. I -- I -- you know, at that
24 point, to myself said, "I'm going to really
25 investigate this now. This doesn't make any

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1 sense. I'll let them pay it for a few months,"
2 but during that period of time -- then that's when
3 I was also busy with RJR. "During that period of
4 time, I'm going to investigate what's going on
5 here, because I don't think I'm being told the
6 truth."

7 That's what really got my
8 suspicions up. So, I didn't look at it from a
9 financial point of view, because I knew darned
10 right well it wasn't going to last, or I suspected
11 it would not last, so that was not a major
12 consideration in entering into that agreement.

13 Q. At the time that you entered into
14 that agreement, you knew that you could cancel it
15 in 30 days?

16 A. And I knew they could cancel it in
17 30 days -- or of 60 days. I forget the details.

18 Q. You knew both parts of that?

19 A. Uh-huh.

20 Q. Either party was free to cancel if
21 it wasn't working out?

22 A. Correct.

23 Q. And all that was being done was, as
24 you understood it, an offer being made to help pay
25 the legal fees to defend tobacco lawsuits, legal

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1 fees that Liggett was incurring?

2 A. I -- that doesn't make any sense,
3 sir, because why would they want to go -- what's
4 the difference what firm they go to? Why would
5 they want to go to a certain firm? What's the
6 matter with any firm? If they are really doing
7 the right job and doing it just for Liggett, for
8 us, what's the difference what firm they go to?
9 There was something else there. Why did they have
10 to go to Latham & Watkins? What's the matter with
11 Kasowitz's firm? What's the matter with any firm?
12 So, I didn't understand why they had to go to a
13 special firm. That did not make sense.

14 Q. So, the part that didn't make sense
15 was the request or requirement that these lawyers
16 go with Latham & Watkins?

17 A. Two things didn't make sense; A,
18 they had to go to Latham & Watkins, and B, they
19 wanted to pay -- pay our fees. Why couldn't they
20 pay our fees at Kasowitz? Why couldn't they go to
21 Kasowitz and let them pay their fees, so there
22 were two elements here that didn't make any sense.

23 Q. But both elements come back to
24 which law firm they went with; is that right?

25 A. That was one of the conditions

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1 they -- that Philip Morris imposed, yes.

2 Q. If Philip Morris had come to you
3 and said, "We will pay the legal fees for these
4 lawyers wherever they go," would you have been
5 suspicious?

6 A. I would have been not as
7 suspicious. I would have been somewhat
8 suspicious, but not as suspicious.

9 Q. And the reason you would not have
10 been suspicious is because you would have thought
11 it might be in their interest to be sure that
12 Liggett had enough money to defend itself?

13 A. Right. If they went to lawyers
14 that I had confidence in, and I had confidence in
15 the Kasowitz firm, because as I said before and
16 I'll say it again, because this was a little
17 inaccurate, that I had dealt with attorneys -- the
18 senior partner there, David Friedman, who was with
19 Mudge, Rose, and a little bit with Kasowitz, so
20 having dealt with them and having a relationship
21 with them and having a relationship with Mark
22 Kasowitz, who I had met a few times and had a good
23 feeling for, if those lawyers were working under
24 the direction of Kasowitz and Friedman, I would
25 have a much higher confidence level, but Philip

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1 Morris made it very clear they would not pay a
2 penny, not one penny unless they didn't go to the
3 Latham, Watkins firm.

4 Q. And that was the concern you had?

5 A. No, both things were a concern. I
6 didn't think it through that much. I didn't
7 separate it in my mind and say, you know, "Go to
8 Kasowitz, go to this," because it was presented to
9 me as a take-it-or-leave-it position, they will
10 pay if we let them go to Latham & Watkins, which
11 to me, meant that Philip Morris would exercise
12 some degree of control over our position.

13 That's what bothered me a lot.

14 Q. Now, up until that time, you had
15 been virtually not involved in defending smoking
16 and health litigation; isn't that right?

17 A. Personally, you mean?

18 Q. Yes, personally.

19 A. Yes, I had not personally been
20 involved.

21 Q. And you had never been represented,
22 according to your sworn testimony, by the Kasowitz
23 firm; is that right?

24 MR. BENSON: Objection.

25 A. Not in smoking and health, I had
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1 not been represented by them. In bankruptcies,
2 yes.

3 Q. Well, didn't you say in your
4 deposition you had never been represented?

5 A. I was represented by David
6 Friedman, who was at Mudge, Rose and then he left
7 Mudge, Rose, because, as you said, it was breaking
8 up, and he went to the Kasowitz firm, so if you
9 want to take it through that level, I was to some
10 degree represented by Kasowitz's firm in the tail
11 end of a bankruptcy.

12 In smoking and health and this area
13 or product liability, which they were experts in,
14 I was not represented by them before -- that's
15 correct.

16 Q. You had been represented by
17 Mr. Friedman while he was with the Mudge, Rose
18 firm, is that right?

19 A. And they left Mudge, Rose and for a
20 while he was at Kasowitz, and he did some cleanup
21 work, so to speak, for us at Kasowitz.

22 Q. Now, are you certain when he left
23 and went to Kasowitz?

24 A. I'm not certain -- I believe it
25 was -- I guess late '94 or early '95, but sometime

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1 in late '94, early '95, he went to Kasowitz.

2 Q. And he had never worked on smoking
3 and health matters for your companies, had he?

4 A. David Friedman?

5 Q. Yes.

6 A. Not to my knowledge.

7 Q. He was not a products liability
8 lawyer, was he?

9 A. No, he was a bankruptcy lawyer.

10 Q. He had gone with this firm that had
11 never before represented you on anything; correct?

12 A. Correct.

13 Q. And you had no experience in
14 defending smoking and health cases, correct?

15 A. Correct.

16 Q. And you had lawyers who for 30
17 years had successfully defended the company that
18 told Mr. Murray and Mr. Murray passed on to you
19 that they believed you were best represented by
20 their going to Latham & Watkins; correct?

21 MR. BENSON: Objection.

22 A. Are you trying to say, why didn't I
23 listen to my lawyers? That goodness I didn't
24 listen to my lawyers.

25 BY MR. VAUGHAN:

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1 Q. I'm trying to focus on the time
2 period that you said you became suspicious.

3 A. Let me ask you another question.
4 Why did Philip Morris -- what did Philip Morris
5 care whether we could defend our cases or not?
6 Why could Philip -- also what got in my mind is,
7 "Why does Philip Morris worry about our financial
8 position?"

9 I don't understand why Philip
10 Morris would be concerned about my personal --
11 "my" meaning Liggett's -- financial position. If
12 we would have not enough money to pay our lawyers,
13 that's our business. What do they care?

14 Q. So, that was a concern that you
15 had?

16 A. There's three concerns: They
17 wanted me to go to Latham, Watkins, they wanted to
18 pay my legal fees, and why do they care whether I
19 have -- whether I can defend it or not. So we go
20 bankrupt, what's the difference to them? As a
21 matter of fact, you know, competitors want to see
22 other competitors go bankrupt most times, so all
23 these things did not add up in my mind.

24 Q. Who did you talk to about that?

25 A. The Kasowitz people and my

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1 inside -- our own people, my in-house employees.
2 Q. Which in-house employees?
3 A. My associate, Mr. Ressler,
4 Mr. Lorber, I spoke to probably Joe Murray about
5 it, obviously.
6 Q. When did you talk to Mr. Lorber
7 about these -- this suspicion based on --
8 A. During the time this happened, '95.
9 Q. Do you recall where you were?
10 A. Fifty-mile radius of New York City.
11 Q. Did you express these concerns to
12 Mr. Ressler?
13 A. Yes.
14 Q. What did he do?
15 A. He expressed concerns, too, but at
16 the time, like I said, we were very busy. We were
17 busy on this RJR proxy fight that was going on at
18 the time, and we decided just to, you know, take
19 the deal and see what happens, think about it
20 later.
21 Q. Did you talk to anyone else?
22 A. I don't recall everybody we talked
23 to about it.
24 Q. Did you talk to Mr. Lorber, you
25 said?

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1 A. Lorber, Ressler, I guess
2 Mr. Chakalian, who was president of Liggett at the
3 time, talked to him about it, Mr. Murray,
4 Mr. Kasowitz, spoke to about it.

5 Q. Mr. Kasowitz thought you ought to
6 insist on his firm, didn't he?

7 A. No, he couldn't fight the fact, he
8 basically said, "Yeah, they're paying all the
9 money, look into it." They wanted to pay
10 everything.

11 Q. Do you recall when you talked to
12 Mr. Lorber?

13 A. The exact day and time and place?

14 Q. Yes.

15 A. No, I don't recall the exact day
16 and time and place.

17 Q. Can you recall what he said?

18 A. Basically, the same thing we all
19 said, "Why are they doing this," doesn't make any
20 sense. We had -- we all had suspicions that
21 something was amiss.

22 Q. Did Mr. Murray have suspicions?

23 MR. BENSON: Objection, instruct
24 the witness not to answer.

25 A. Not really, no.

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1 BY MR. VAUGHAN:

2 Q. Are you claiming the
3 attorney/client privilege as far as your
4 conversations with Mr. Murray are concerned?

5 A. On this one point, you know, I
6 don't know what to say. I mean, he didn't have
7 any major suspicions.

8 Okay, I won't answer. I'm
9 turning -- you know, I'm --

10 Q. Are you claiming the privilege or
11 not claiming the privilege?

12 A. Can I -- can I claim or not claim
13 the privilege on this one point, or does this
14 release the attorney/client privilege for
15 everything, is my question? Am I allowed to ask
16 my lawyer that question?

17 Q. The one thing I will not do here,
18 Mr. LeBow, is provide legal advice to you. You've
19 got a lawyer sitting there, you can confer with
20 him, if you want to.

21 MR. BENSON: I will instruct the
22 witness not to answer, if that will help.

23 A. I will listen to my attorney.

24 BY MR. VAUGHAN:

25 Q. Did you talk to Mr. Chakalian, you
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1 said?

2 A. I believe so, yes.

3 Q. Where did that conversation occur?

4 A. Well, over the telephone, I'm sure.

5 Q. What did he say?

6 A. He was very, you know, concerned.

7 He just -- we didn't understand the logic of it,

8 and I basically didn't think it was right.

9 Q. So, you decided to accept the money
10 for the time being and continue with the proxy
11 fight that you had going?

12 A. Right.

13 Q. Now, have you told us everyone that
14 you expressed some questions about or concerns
15 about as a result of Philip Morris' offering to
16 provide money for Liggett to use in legal fees?

17 A. I told you about five, six people.
18 Whether there were ten or fifteen people, I don't
19 recall. There could have been. Who else they
20 were or where, I don't know.

21 Q. Did you talk to any lawyers besides
22 Mr. Kasowitz?

23 A. What year is this; '95? I don't
24 believe so.

25 I take that back. I could have
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1 talked to my Milbank attorneys, attorneys at
2 Milbank about it.

3 Q. Which attorneys did you talk to at
4 Milbank about it?

5 A. We had two main attorneys we used
6 there, Mr. Hirschfield and Mr. Immergut,
7 I-M-M-E-R-G-A-U-T -- or G-U-T, I should say.

8 Q. Now, do you specifically recall
9 talking to them about this?

10 A. No, not a hundred percent, but it's
11 most likely that I did.

12 Q. Did you get any advice from Milbank
13 on this issue?

14 A. I don't recall.

15 Q. Now, Milbank was representing you
16 in this proxy fight, weren't they?

17 A. Right.

18 Q. And you had had a prior
19 relationship with Milbank --

20 A. Yes.

21 Q. -- a long-standing relationship
22 with Milbank?

23 A. Yes.

24 Q. They had been your lawyers for a
25 number of years?

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1 A. Correct.
2 Q. But you're not sure whether you
3 talked to them about this?
4 A. I'm not a hundred percent sure. It
5 was three years ago -- two, three years ago.
6 Q. And you are sure that you got no
7 written advice about it; correct?
8 A. From them?
9 Q. Yes.
10 A. Yes, I'm sure of that.
11 Q. And you are sure that they were not
12 asked to conduct any kind of investigation?
13 A. That's correct.
14 Q. Now, I think you said that the
15 other reason that you had a concern develop in
16 September of '95 besides Philip Morris offering to
17 pay legal fees was the RJR proxy fight --
18 MR. BENSON: Objection.
19 A. Correct.
20 BY MR. VAUGHAN:
21 Q. -- or at least what occurred in
22 connection with that proxy fight; is that right?
23 A. Well, the first phase of it, which
24 was a nonbonding resolution by the shareholders,
25 solicitation.

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1 Q. What do you mean by that?

2 A. The shareholders were being
3 solicited as to -- to send -- to tell the board
4 whether they should do a spinoff, a so-called
5 spinoff of Nabisco from the tobacco company.

6 Q. Now, in fact, you had urged that
7 the shareholders -- first the board and then the
8 shareholders to spin off the food part of the
9 business of RJR Nabisco; is that right?

10 A. Right.

11 Q. And what you wanted to do was
12 combine Liggett and RJR Nabisco, spin off the food
13 and have a tobacco entity remaining that would
14 consist of both Reynolds Tobacco Company and
15 Liggett?

16 A. Possibly, or just spin it off. It
17 did not necessarily include -- the proposal that
18 was put to the shareholders did not include
19 anything regarding Liggett.

20 Q. At least, not initially?

21 A. Or even later.

22 Q. After you reached your settlement
23 with the Attorneys General, you sent solicitations
24 out to the shareholders telling them what a
25 wonderful deal you had struck and that Reynolds

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1 could get the benefit of that deal if they merged
2 with Liggett?

3 A. If the shareholders approved it.

4 Q. Yeah. Now, Reynolds -- or the RJR
5 Nabisco board responded to your request or
6 insistence that the tobacco -- that the food
7 business be spun off by saying, in part, that they
8 could not do it due to the pending litigation?

9 A. That was one of their main reasons,
10 yes.

11 Q. And the pending litigation included
12 not just the traditional individual claims that
13 had been made off and on over the years, but also,
14 the Attorneys General lawsuits; correct?

15 A. And the class action.

16 Q. And the Castano class action?

17 A. That's correct, that's what they
18 said.

19 Q. The Castano class action was
20 purported to be a national class action based on
21 addiction?

22 A. Correct.

23 Q. And what they said was that if they
24 tried to spin off the food business, the
25 Plaintiffs' lawyers in these other cases might go

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1 to court and get an injunction to stop that
2 spinoff until those lawsuits could be resolved?

3 A. Correct, but if you have no -- no
4 potential liability, you could not get an
5 injunction, so I didn't understand what they were
6 talking about.

7 Q. You understood, did you not, that
8 if the Plaintiffs claimed there was potential
9 liability, they might be successful in some court
10 somewhere in obtaining the injunction that was
11 described by the RJR Nabisco board?

12 A. No, I didn't understand that at
13 all. If there is no -- just -- a mere claim does
14 not lead to an injunction, so I didn't understand
15 what they were talking about. Why couldn't you go
16 do the spinoff?

17 Q. Who did you talk with about that?

18 A. Many of the lawyers -- many of the
19 lawyers.

20 Q. What lawyers?

21 A. Milbank lawyers, the Wall Street
22 analysts saying the same thing -- you know, many
23 people. I don't recall exactly who offhand, so --
24 but it was pretty clear that unless you have a
25 bona fide claim, a real claim and a large claim,

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1 this could not happen, but RJR was, in essence,
2 telling me that it could happen, which to me,
3 meant that they did have a claim, and maybe their
4 claim is real, so putting that together with the
5 Philip Morris issues, I said, "What's going on
6 here?"

7 I have been told for 40 years by
8 all my lawyers and the whole tobacco industry that
9 there are no claims. Now I've got the two major
10 people, in essence, telling me there are claims --
11 and bona fide claims by that.

12 Q. Now, you just said you had been
13 told for 40 years.

14 You don't mean 40 years, do you?

15 A. The industry has been saying it for
16 40 years. I wasn't around 40 years ago listening
17 to them, if that's your question.

18 Q. What you mean is that you had been
19 told that the industry was successfully defending
20 and could successfully defend the individual
21 claims that had been asserted --

22 MR. BENSON: Objection.

23 BY MR. VAUGHAN:

24 Q. -- correct?

25 A. Well, I didn't separate the
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1 individual class action or Attorney General
2 claims. It's a claim, period, not necessarily
3 individual claims.

4 Q. Until it got to 1995, then you
5 began to separate those claims, didn't you?

6 A. What do you mean, "separate the
7 claims"?

8 Q. Individual claims versus class
9 actions?

10 A. No, I said a claim is a claim is a
11 claim, a liability is a potential liability. I
12 was told there's no real potential liability.
13 Let's use those words, if we may. There's no
14 potential liability for tobacco litigation, and
15 the tobacco companies have never paid a penny in
16 40 years, whatever it may be, and there is no
17 liability.

18 And then in '95, I've got Philip
19 Morris saying they want to pay my legal fees and
20 they want my lawyers to go to some law firm they
21 have a relationship with or something -- I don't
22 know why. I don't know why they picked Latham &
23 Watkins and not someone else, okay, and I have RJR
24 saying they can't do a spinoff because there will
25 be injunctions all over the country stopping them

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1 because of potential liabilities, when on the
2 other hand, they were telling me there are no
3 liability, so these things did not add up.

4 Q. Did your lawyers ever tell you or
5 Mr. Murry ever tell you that Mr. Kearney and
6 Mr. Decker preferred to go to Latham & Watkins?

7 A. I never talked to Mr. Kearney
8 directly?

9 Q. Did Mr. Murray ever tell you that
10 Mr. Kearney or Mr. Decker wanted to go to Latham &
11 Watkins?

12 A. I don't understand what that had to
13 do with anything. I'm the one paying the bills,
14 not them. I don't care where they prefer to go.
15 I wanted them to go where I had the relationships
16 and go to the firm I wanted them to go to.

17 Q. Wherever they wanted to practice
18 law, you were going to control that?

19 A. Control what?

20 Q. Where they went to practice law.

21 A. I wanted them to go someplace where
22 I wanted to go. If they didn't want to go, I'd
23 get other lawyers.

24 Q. Now, you became concerned during
25 this proxy fight about the amount and the nature

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1 of the litigation; is that right?

2 A. Yes.

3 MR. BENSON: Objection.

4 BY MR. VAUGHAN:

5 Q. And you talked with the Milbank
6 lawyers and with your -- and some tobacco industry
7 analysts?

8 A. And to the Kasowitz people.

9 Q. Did you go back to Joe Murray and
10 ask him about the Castano lawsuit in detail or
11 about the Attorneys General lawsuit in detail to
12 get some more information about what the issues
13 were?

14 A. Yes.

15 Q. Did he provide you information?

16 A. Yes, he provided me some lengthy
17 memos, yes, at that time.

18 Q. Are you willing to provide those
19 memos to us?

20 A. I don't have them.

21 Q. Do you waive any privilege with
22 respect to those memos?

23 A. Yes.

24 Q. And did he tell you in those
25 communications that regardless of the merits of

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1 the claims, there were a lot of dollars at issue
2 in the lawsuits?

3 A. He probably did, yes.

4 Q. Did you ask him for any additional
5 information?

6 A. I don't recall.

7 Q. Did you ask the lawyers who were
8 defending the case on the front line --
9 Mr. Kearney, Mr. Decker and others -- for their
10 assessment of the claims?

11 MR. BENSON: Objection.

12 A. No, I told you, I didn't talk to
13 them at all.

14 BY MR. VAUGHAN:

15 Q. Did you ask any lawyers at Milbank
16 to talk with your lawyers at wherever they were,
17 Mr. Kearney and Mr. Decker, concerning the claims
18 as part of the overall proxy fight you were in?

19 A. No.

20 Q. Now, there was certainly no reason
21 that the lawyers at Milbank couldn't have talked
22 with Mr. Kearney and Mr. Decker, was there?

23 A. They could have talked to them. I
24 have no idea. They may have talked to them on
25 their own, as far as I know.

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1 Q. But you didn't ask them to do that?

2 A. Not that I recall.

3 Q. And you never asked the Milbank
4 lawyers for their analysis of these issues, did
5 you?

6 A. No --

7 Q. Instead --

8 A. -- other than the analysis of this
9 injunction issue, if you include that.

10 Q. Instead, you gave instructions to
11 the Kasowitz firm; correct?

12 A. Correct.

13 Q. And you told them -- well, back
14 up.

15 The questions had arisen in your
16 mind and you could have called in lawyers and
17 asked other lawyers and asked them to see --
18 strike that.

19 You could have called in Mr. Murray
20 and asked for more information than you had
21 previously requested and gotten, you could have
22 called in Mr. Kearney, Mr. Decker, and you could
23 have called in the Milbank lawyers, but you did
24 none of that?

25 MR. BENSON: Objection.

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1 BY MR. VAUGHAN:

2 Q. You could have called in
3 management --

4 THE COURT REPORTER: I'm sorry, I
5 didn't hear the answer.

6 MR. VAUGHAN: I'm sorry.

7 THE WITNESS: I didn't hear the
8 question.

9 MR. VAUGHAN: I thought he nodded.
10 Go ahead.

11 THE WITNESS: Repeat the question.
12 I could have called all these lawyers in; yeah, I
13 could have; yes, I could have.

14 BY MR. VAUGHAN:

15 Q. And you could have called
16 management at Liggett and have them investigate,
17 couldn't you?

18 MR. BENSON: Objection.

19 A. Yes.

20 BY MR. VAUGHAN:

21 Q. And you could have gone to talk
22 with the scientists or had some of your lawyers
23 from Brooke Group or from Milbank go talk with the
24 lawyers and -- I mean, talk with the scientists,
25 couldn't you?

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1 MR. BENSON: Objection.

2 A. Yes.

3 BY MR. VAUGHAN:

4 Q. And you didn't do that, did you?

5 A. No, I used my own intubation, which
6 in this case, obviously has turned out to be
7 absolutely 100 percent correct, because your
8 client has just stepped forward and agreed to pay
9 368 billion dollars for the same exact thing.

10 Now, who did he talk to? He talked
11 to his lawyers and he talked to his scientists, he
12 did all this talking, and he agreed to do even
13 more than I agreed, paying all these things and
14 agreeing that smoking is addictive, et cetera, et
15 cetera, so I think I made 100 percent the right
16 decision.

17 MR. VAUGHAN: Motion to strike as
18 nonresponsive.

19 BY MR. VAUGHAN:

20 Q. I believe we had established that
21 you also hadn't called on your Liggett management,
22 and you hadn't called on Liggett scientists, and
23 as far as you know, they could have provided
24 whatever information you wanted, couldn't they?

25 MR. BENSON: Objection.

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1 A. Their opinions, they could have
2 provided.

3 BY MR. VAUGHAN:

4 Q. And you also could have had the
5 Kasowitz firm simply investigate and get a second
6 opinion directly by looking at documents, talking
7 to Liggett scientists and talking to Mr. Decker
8 and Mr. Kearney, couldn't you?

9 MR. BENSON: Objection.

10 A. We already said, we didn't have
11 enough money to pay all these legal fees. I
12 wasn't going to waste my money on that.

13 BY MR. VAUGHAN:

14 Q. You could have done these things?

15 A. I could have done anything, yes.

16 Q. Particularly with Philip Morris
17 paying your legal fees at that time, you had some
18 money to spend on the Kasowitz firm conducting
19 that investigation, didn't you?

20 MR. BENSON: Objection.

21 A. Well, I figured they weren't going
22 to be paying much longer, after I finished with
23 them.

24 BY MR. VAUGHAN:

25 Q. That's because you were so certain
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1 at that time that there was something wrong?

2 MR. BENSON: Objection.

3 A. I had serious suspicions, which I
4 will say again, have turned out to be 125 percent
5 correct, because Philip Morris and RJR have now
6 done exactly the same thing, just two years later
7 after the handwriting is on the wall and the
8 whistle has been blown, and they couldn't take it
9 and now -- they just settled for 15 billion
10 dollars in two states, and it's not over yet, now
11 they are going to Texas and probably settle there.
12 I just read yesterday, they are getting ready to
13 settle this secondhand smoke case down in Florida
14 for hundreds of millions of dollars, so who was
15 right and who was wrong, counselor?

16 Q. Have you finished your answer?

17 A. Yes.

18 MR. VAUGHAN: Motion to strike the
19 answer as nonresponsive.

20 THE WITNESS: Okay.

21 BY MR. VAUGHAN:

22 Q. Now, we can go through that as many
23 times as you want to, Mr. LeBow.

24 A. I'm enjoy it, I'll do it.

25 Q. It will make the deposition go

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1 longer.

2 A. That's okay, I have time. I'm not
3 in a rush.

4 Q. Okay, neither am I.

5 A. It's important we do this right.

6 THE COURT REPORTER: I'm sorry, one
7 at a time, please.

8 BY MR. VAUGHAN:

9 Q. We will be here as long as we need
10 to be here.

11 A. Fine.

12 Q. Now, you could have had the
13 Kasowitz firm conduct an investigation and get a
14 second opinion from what you were being told by
15 Mr. Murray, couldn't you?

16 MR. BENSON: Objection.

17 A. Investigation of what?

18 BY MR. VAUGHAN:

19 Q. Look at documents and talk to
20 scientists.

21 MR. BENSON: Objection.

22 A. You mean, internal documents?

23 BY MR. VAUGHAN:

24 Q. Yes. Whatever you needed to do on
25 to satisfy yourself about what you were being

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1 told.

2 A. Well, my suspicions of my attorneys
3 at that time were very high that, you know,
4 especially when they are being paid by one of my
5 competitors, they are now being paid -- I've got
6 my attorneys now being paid by one of my
7 competitors, I didn't want to alert them to my
8 suspicions by asking for documents, so I refused
9 to do that at the time.

10 Q. You didn't want to alert your
11 lawyers, inside counsel and outside counsel, to a
12 suspicion, and therefore, you didn't seek any kind
13 of second opinion from the Kasowitz firm?

14 A. No, I didn't say that.

15 MR. BENSON: Objection.

16 A. I talked to the Kasowitz firm quite
17 a bit about this issue. I didn't seek, you know,
18 inside, in-house documents to verify more, because
19 I don't know who these lawyers were working for
20 any longer. They are now being paid by someone
21 else. They weren't being paid by me, they were
22 being paid by a competitor, so that had my
23 suspicions up.

24 BY MR. VAUGHAN:

25 Q. So, instead what you did was, you
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1 instructed the Kasowitz lawyers not to conduct an
2 investigation within Reynolds -- within Liggett,
3 but instead, you said, "Go talk to the Plaintiffs'
4 lawyers about these claims"?

5 A. I said two things --

6 MR. BENSON: Objection.

7 A. -- look at the public documents.
8 That information was publicly available, and some
9 of it was available, you know, the various courts
10 around the country, and as I said before, I
11 figured the fastest way to really find out what --
12 the other side of the story -- after all, when you
13 talk to your counsel, you're trying to find out
14 what the case is in-house, the quickest way is,
15 let's talk to the other side. I want to find out
16 what's really going on here.

17 BY MR. VAUGHAN:

18 Q. So, instead of calling in Kearney
19 or Decker or anyone like that, you said to your
20 new lawyers from the Kasowitz firm, "Go talk to
21 the Plaintiffs lawyers and surprise of surprises,
22 the Plaintiffs' lawyers said, "We have great
23 claims"; is that --

24 MR. BENSON: Objection.

25 A. Instead of talking to the lawyers
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1 who were being paid by Philip Morris -- let's call
2 them that -- instead of talking to the lawyers who
3 were being paid by Philip Morris, I asked
4 Kasowitz, "Let's talk to the other side and let's
5 listen to them."

6 Yeah, sure, the other side always
7 say they got claims, but I want to hear the
8 claims. We start -- we sat down, we started
9 listening to the claims and hearing some of the
10 other side.

11 Q. And, of course, they told you they
12 had great claims?

13 A. Naturally --

14 Q. And --

15 A. Which, by the way, your client
16 apparently agrees to, because he just agreed to
17 pay 368 billion dollars, so they must have
18 something, you know -- some great claims. Three
19 hundred and sixty-eight billion dollars is what
20 you'd call a good claim.

21 MR. VAUGHAN: Motion to strike as
22 nonresponsive.

23 THE COURT REPORTER: Excuse me, we
24 have five minutes left on the tape.

25 BY MR. VAUGHAN:

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1 Q. Kasowitz lawyers came back to you
2 and said, "Plaintiffs' lawyers say they have great
3 claims and they are willing to negotiate"; is that
4 right?

5 A. Correct.

6 Q. And you said, "Let's negotiate"?

7 A. "Let's meet and talk," is what I
8 said -- can't hurt to talk. I saw nothing wrong
9 with talking.

10 MR. VAUGHAN: Let's go ahead and
11 change the tape now.

12 (Brief recess.)

13 THE COURT REPORTER: We are on the
14 record.

15 BY MR. VAUGHAN:

16 Q. Mr. LeBow, I believe when we
17 stopped, we had gotten up to the point of the
18 negotiations that were about to occur with respect
19 to what ultimately became the first settlement
20 agreement?

21 A. Correct.

22 Q. You and your new lawyers went off
23 to negotiate with the Plaintiffs' lawyers?

24 A. Correct.

25 Q. And your team consisted of you, who
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1 had not been involved in the day-to-day business
2 of Liggett and in the day-to-day handling of
3 smoking and health issues; correct?

4 A. Correct.

5 Q. And who knew very little about the
6 litigation itself at that point in time?

7 A. Correct.

8 Q. And the Kasowitz lawyers, who knew
9 what the Plaintiffs' lawyers had told them the
10 issues and the claims were?

11 MR. BENSON: Objection.

12 A. And had done their own independent
13 research from the public records.

14 BY MR. VAUGHAN:

15 Q. What was on the Internet?

16 A. No, the documents from the
17 courthouses. I don't know if all that was on the
18 Internet.

19 Q. They had not looked at any Liggett
20 documents, had they?

21 A. To my knowledge, no.

22 Q. And they had not talked with any
23 Liggett personnel, had they?

24 A. No, I don't believe so.

25 Q. You didn't let anyone else in the

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1 industry know you were having these conversations,
2 did you?

3 A. No, I did not.

4 Q. And you didn't even let your own
5 lawyers, inside counsel or outside counsel, know
6 that you were involved in these negotiations?

7 MR. BENSON: Objection.

8 A. I did not let my own lawyers,
9 inside counsel and the lawyers that were being
10 paid by Philip Morris, which were the outside
11 counsel, know about the negotiation; that's
12 correct.

13 BY MR. VAUGHAN:

14 Q. At the time you went to negotiate,
15 the proxy fight was well underway, wasn't it?

16 A. The solicitation was well
17 underway -- the consent solicitation, it was
18 called.

19 Q. And that was the consent
20 solicitation to try to get the RJR Nabisco board
21 to spin off Nabisco?

22 A. That's correct.

23 Q. Or alternatively, to get the
24 shareholders, if the board wouldn't take that
25 action, to elect a slate of directors that you

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1 proposed?

2 A. No, that was not part of the
3 consent solicitation.

4 Q. That wasn't part of the initial
5 consent solicitation, but that ultimately became
6 the strategy, didn't it?

7 A. Yeah, ultimately, if they refused
8 to do what the shareholders wanted them to do, if
9 the shareholders requested that they just
10 independently spin off Nabisco and do the right
11 thing, and they kept saying they could not do it.

12 Q. And if they did not do it, you
13 wanted the shareholders to elect your slate of
14 directors?

15 A. Who was committed to doing it.

16 Q. And that slate of directors
17 included yourself and Mr. Fulford, who later
18 became CEO of Liggett?

19 A. Correct.

20 Q. Now, prior to that consent
21 solicitation --

22 A. Excuse me, let me correct that. I
23 don't think Mr. Fulford at this point in time was
24 on the board, or a regular member of the board.
25 He was not part of the board on solicitation.

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1 That's not correct.

2 Q. At some point during that consent
3 solicitation process, was Mr. Fulford's name not
4 put before the RJR Nabisco shareholders as the
5 person you proposed as the new CEO of RJR Nabisco?

6 A. Yes, but not as a director.

7 Q. Okay. Now, prior to commencing
8 that consent solicitation, you had conducted a
9 number of activities during the year 1995 designed
10 to combine Liggett with another tobacco company,
11 hadn't you?

12 MR. BENSON: Objection.

13 THE WITNESS: Which tobacco
14 company?

15 BY MR. VAUGHAN:

16 Q. Well, without being specific first,
17 had you not during 1995 attempted to discuss with
18 various parties deals whereby Liggett would be
19 combined with another tobacco company?

20 A. No.

21 Q. Had you not approached RJR Nabisco
22 about combining Liggett and RJR Nabisco?

23 A. I approached RJR Nabisco about
24 Liggett, Reemsa, a large German tobacco company,
25 and RJR, the three of us entering into a venture.

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1 Q. And you also approached some
2 foreign companies about possible arrangements or
3 joint ventures or mergers between Liggett and
4 those companies, did you not?

5 A. No, that's totally untrue.

6 Q. You did not have any conversations
7 about those issues?

8 A. I had no conversations about those
9 issues with foreign companies. The conversation I
10 had with a foreign tobacco company that you allude
11 to were for them to join into this consent
12 solicitation and potential proxy change.

13 Q. Now, Mr. LeBow, the reason you were
14 doing those things is because, being a businessman
15 and being aware of Liggett's worsening financial
16 situation, you believed that you needed to come up
17 with some creative ideas to combine Liggett with
18 some other companies, didn't you?

19 A. No, that was not part of the
20 strategy. We -- I was a major shareholder of RJR,
21 myself and Mr. Icahn, who was my associate in this
22 venture, we were the second largest shareholder of
23 RJR, and we did all this to make money, because we
24 felt there was value, as everyone on Wall Street
25 felt, and today -- even today as we sit here, they

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1 still believe it, there's value in splitting up
2 the tobacco and food business.

3 That was the primary rationale for
4 the consent solicitation and the potential proxy
5 change.

6 Q. And as part of that spinoff, you
7 had in your mind, did you not, Liggett being
8 combined with Reynolds and/or another company?

9 MR. BENSON: Objection.

10 A. That was not part of our condition
11 of any deal, no.

12 BY MR. VAUGHAN:

13 Q. But that's what you ultimately had
14 in your mind as your plan, whether you made it a
15 condition or not; isn't that right?

16 MR. BENSON: Objection.

17 A. It's possible. It would be up to
18 the shareholders of RJR to approve it, which they
19 would only do if it made sense. They would not do
20 it if it wasn't economical sense to them.

21 BY MR. VAUGHAN:

22 Q. And to the extent that they
23 approved your board of directors, that increased
24 the chances that the two companies would combine
25 and the food business would be spun off, did it

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1 not?

2 A. Well, improved the chances of --
3 the food business being spun off, that was part of
4 the commitment that our board made. There was no
5 commitment whatsoever vis-a-vis Liggett.

6 Q. And isn't it true that in 19 --
7 late 1995, part of what was driving you was, on
8 the one hand, a need for this consent solicitation
9 and this proxy battle to proceed successfully from
10 your standpoint on one side, and at the same time,
11 a need to control the exposure your company had or
12 fear that you had with respect to liability
13 issues?

14 A. At that point in time, again, I had
15 not seen any documents then. I did not know any
16 of the public health issues at this point in
17 time. I just had suspicions.

18 At that point in time, the need to
19 protect Liggett against a devastating lawsuit or
20 judgment and this issue you're talking about, they
21 were both my motivations then, yes.

22 Q. And as I believe you said, Liggett
23 could not afford to suffer even a small judgment
24 at that point in time?

25 A. Relative to the other companies,
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1 that's correct. That's still correct today, as a
2 matter of fact.

3 Q. So, just as when you did deals
4 earlier in your career that didn't allow time for
5 due diligence, likewise, in this situation, you
6 had to reach a deal soon with the Castano
7 Plaintiffs and the Attorneys General in order to
8 further your business interests, didn't you?

9 MR. BENSON: Objection.

10 A. Well, but the -- the potential
11 trials were still at that point over a year
12 away -- year, year and a half away, so I don't
13 know what you mean by "soon."

14 I felt it was a prudent business
15 thing to do, but Liggett could not afford a
16 potentially devastating judgment, and as you look
17 at the judgments that -- the deals are being made
18 today, I was right. I mean, your company is going
19 out, your company and the industry is going out
20 and making 15 billion dollars with two states --
21 just two states. Liggett can't afford to pay its
22 share of that -- never could, never would.

23 So, it was the right decision to
24 do. I had to do it to protect Liggett.

25 MR. VAUGHAN: Motion to strike the
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1 part that's not responsive, especially the part
2 about a settlement agreement that has not been
3 discussed here.

4 BY MR. VAUGHAN:

5 Q. Mr. LeBow, you needed a deal,
6 didn't you?

7 A. For what reason?

8 Q. In order to limit any liability
9 exposure from Liggett's standpoint.

10 A. That's obvious. I mean, excuse me,
11 the tobacco industry needs a deal. I mean, you
12 can't -- the tobacco industry can't afford the
13 deal they are talking about now. They are crying
14 they can't go any more, so the whole industry
15 needed a deal, I just, you know, needed it, you
16 know, more than they do, because I can't even
17 afford to pay the 15 billion, but the 15 billion
18 they're paying now, they can obviously afford
19 that, because they agreed very easily to pay that
20 15 billion dollars to two states --

21 MR. VAUGHAN: Motion to --

22 A. -- and there's 48 more to go.

23 MR. VAUGHAN: Motion to strike as
24 nonresponsive.

25 BY MR. VAUGHAN:

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1 Q. I'm asking you about your company,
2 Mr. LeBow, and whether you needed in 1995 and
3 early '96 as a businessman trying to protect the
4 interests of your company, whether you needed to
5 reach a deal to settle those cases?

6 A. It was a prudent business thing to
7 do, considering that if trials were coming up a
8 year and a half later -- even though Philip Morris
9 was paying my legal fees at that time, it was a
10 prudent thing to do.

11 Q. And it was a prudent thing to do,
12 regardless of whether the documents and the
13 history of the tobacco litigation was favorable to
14 Liggett or unfavorable to Liggett, it was still a
15 prudent thing to do settlementwise?

16 A. Absolutely, at that point in time,
17 that's absolutely true.

18 Q. And that's the way you looked at it
19 from your standpoint for Liggett?

20 A. I had no other facts to go on at
21 that time. All I had was my -- were my
22 suspicions.

23 Q. And you proceeded with your
24 Kasowitz lawyers to try to strike that deal?

25 A. Correct.

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1 Q. And another incentive you had in
2 striking that deal was, in addition to getting out
3 of the frying pan, so to speak, from the
4 standpoint of these liability suits, you also
5 might be able to structure it in a way that gave
6 you an advantage in your consent solicitation
7 fight with RJR Nabisco?

8 MR. BENSON: Objection.

9 A. Proxy, not consent solicitation.
10 BY MR. VAUGHAN:

11 Q. Well, now in the proxy fight, in
12 the proxy fight with RJR Nabisco?

13 A. Possibly, yes.

14 Q. And, in fact, you structured a deal
15 that was designed to do exactly that?

16 A. Correct.

17 Q. And you took that deal and waved it
18 to the shareholders of RJR Nabisco as a way that
19 they could limit the exposure of their company, as
20 you saw it, and at the same time, spin off the
21 food business?

22 A. Correct.

23 Q. And the result of that deal would
24 have been -- would have been a combination of
25 Liggett and RJR Reynolds Tobacco Company?

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1 A. No, that was not a guarantee, that
2 was up to the shareholders.

3 Q. It was up to the shareholders --

4 A. Right.

5 Q. -- and the board of the new RJR
6 Nabisco?

7 A. No, not the board, just the
8 shareholders.

9 Q. But that was in your mind as to
10 what would inevitably occur; correct?

11 MR. BENSON: Objection.

12 A. We had, you know, 3 or 4 percent of
13 the stock. It was up to all the other
14 shareholders to vote this, and I bet if you held
15 the same vote today, they would vote for it in a
16 second, because the deal we had in 1996 was a lot
17 less than the 368 billion that this same board --
18 this expert board agreed to pay.

19 MR. VAUGHAN: Motion to strike,
20 same as before.

21 BY MR. VAUGHAN:

22 Q. What I'm trying to ask you,
23 Mr. LeBow, is whether when you went back to the
24 RJR Nabisco shareholders, in your mind, that you
25 had a deal that you wanted to waive to them and

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1 convince them to sign on to so that ultimately,
2 Liggett can be combined with RJR Reynolds Tobacco
3 Company?

4 MR. BENSON: Objection.
5 Mr. Vaughan, you've asked him -- this question has
6 been asked and answered about eighteen times
7 already. Can we move on to something else?

8 MR. VAUGHAN: As soon as he answers
9 it, yes.

10 MR. BENSON: He's answered it about
11 eighteen times.

12 A. If the shareholders approved,
13 subject to their sole discretion, sole approval,
14 yes.

15 BY MR. VAUGHAN:

16 Q. And you tried to structure the deal
17 in a way that would give them an incentive to do
18 so?

19 MR. BENSON: Objection.

20 A. Excuse me, the deal was also
21 structured in such a way that any other tobacco
22 would get the same benefit or could get the same
23 benefit if their shareholders were to approve it,
24 so it was up to any company that wanted to get
25 these -- this benefit of this deal, except Philip

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1 Morris, as I said before, any of the other tobacco
2 companies could have gotten the same benefit.

3 BY MR. VAUGHAN:

4 Q. And you were willing to talk to the
5 other companies, as well, weren't you, as a
6 businessman?

7 A. Yeah, of course. I had a fiduciary
8 responsibility, I must talk to them.

9 Q. Now, so it's clear on the record,
10 this particular settlement was motivated by a
11 desire to avoid exposure on liability issues and
12 to further the interests and the proxy fight, it
13 had nothing to do at that point in time with what
14 you have later described as the, quote, "right
15 thing to do"?

16 MR. BENSON: Objection.

17 BY MR. VAUGHAN:

18 Q. Since you had conducted no
19 investigation at that time?

20 MR. BENSON: Objection.

21 A. No, but I had my suspicions that
22 something was dreadfully wrong.

23 BY MR. VAUGHAN:

24 Q. But what you were motivated for at
25 this point in time was limiting exposure and

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1 maximizing your position in the proxy --

2 MR. BENSON: Objection, asked and
3 answered.

4 A. That was the obvious result, but my
5 motivations also were suspicions that the strategy
6 adopted by the tobacco companies and the industry
7 for 40 years was dreadfully wrong. I had serious,
8 serious, you know, suspicions to that effect. I
9 did not have the documentation to back me up or
10 the information, but I had serious suspicions.

11 BY MR. VAUGHAN:

12 Q. And you've told us already
13 yesterday and today all of the bases for those
14 suspicions?

15 A. Yes.

16 Q. Now, once your settlement was
17 announced, it had certain results, didn't it?

18 A. Yes.

19 Q. One of those results was that the
20 lawyers who had worked for Reynolds -- Liggett for
21 20 years inside and for 30 years outside fired
22 you?

23 A. Well, they quit, if that's what you
24 mean by firing me, they quit.

25 Q. They didn't quit in response to
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1 your telling them they had to quit or would be
2 fired, did they?

3 A. That's correct.

4 Q. They simply said, "You've
5 negotiated this deal in secret without letting us
6 know what was going on while we were defending
7 these cases, and we're not going to continue under
8 those circumstances"?

9 MR. BENSON: Objection.

10 BY MR. VAUGHAN:

11 Q. Is that right?

12 A. That's absolutely right. They
13 didn't quite say it, but it was pretty obvious.

14 Q. Now --

15 A. Excuse me, and I believe another
16 reason is, they didn't agree with the settlement,
17 not that we did it just in secret, but they
18 thought the settlement was wrong to have done, to
19 have entered -- to have agreed to these things, to
20 have entered into negotiations with the
21 Plaintiffs. They thought it would hurt the
22 industry position.

23 Q. Now, none of them made any attempt
24 to stay around and cover their tracks, did they?

25 A. What do you mean, cover their

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1 tracks?

2 Q. Do anything they could to hide
3 documents or take any steps to limit any issues
4 with respect to their own situations, did they?

5 MR. BENSON: Objection.

6 A. You have to ask them. I have no
7 idea what they did or didn't do.

8 BY MR. VAUGHAN:

9 Q. They just came to you and said,
10 "We're are out of here," didn't they?

11 MR. BENSON: Objection, asked and
12 answered.

13 A. No, not initially. I mean,
14 Latham & Watkins did initially. Joe Murray, the
15 inside lawyer, spent a few months before they did
16 that, they left, so I don't know what they did in
17 that interim period, didn't do.

18 BY MR. VAUGHAN:

19 Q. You have no information from the
20 Kasowitz firm or anyone else that there's any
21 indication they ever destroyed any documents, do
22 you?

23 A. The only indication I have, certain
24 documents should have been released and weren't
25 released over certain courts, that information I

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1 have, was told.

2 Q. You have no information that they
3 destroyed any documents, do you?

4 A. How would I know? No, I have no
5 information.

6 Q. Now, one of the things you ended up
7 settling was the Castano case?

8 A. Correct.

9 Q. Subsequent to this settlement, the
10 appellate courts decertified that case; correct?

11 A. Correct.

12 Q. The industry won that lawsuit,
13 didn't they?

14 A. Yes.

15 Q. Another result of the lawsuit --
16 excuse me -- of the settlement is that the number
17 of Attorneys General lawsuits went from five or
18 six to double digits; correct?

19 A. That had nothing to do with the
20 settlement.

21 Q. You don't think that Liggett's
22 paying money to Attorneys General caused other
23 Attorneys General to look more seriously at filing
24 claims?

25 A. Oh, yeah, I'm sure it made them
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1 look more seriously, yes.

2 Q. You don't think it had anything to
3 do with Florida's legislature's decision not to
4 override the veto of the governor to appeal the
5 legislation, when all of a sudden, a tobacco
6 company was paying money?

7 A. I don't know.

8 Q. Another result was, you lost the
9 proxy fight, didn't you?

10 A. Very badly, yes. All the
11 shareholders voted against it after they saw the
12 settlement, and a lot of the shareholders, I will
13 add, are also Philip Morris shareholders
14 simultaneously.

15 I think if we had that vote today,
16 it would be a different story, but that's a
17 different issue.

18 Q. In addition, you said the
19 wholesalers became angry with you; correct?

20 MR. BENSON: Objection.

21 A. No, that was a year later. That
22 was after the second settlement.

23 BY MR. VAUGHAN:

24 Q. By the way, while we're talking
25 about the wholesalers, you mention a letter going

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1 out from the wholesalers' association?

2 A. Correct.

3 Q. You have no proof that the tobacco
4 companies, the cigarette manufacturers were
5 involved in that, do you?

6 A. No, I have no proof.

7 Q. And you don't know what, if any
8 harm has resulted to you as a result of that?

9 A. I don't know any detail, no.

10 Q. And furthermore, after this
11 settlement was reached, Liggett's financial
12 condition continued to deteriorate, didn't it?

13 A. I would say it somewhat
14 accelerated.

15 Q. The deterioration accelerated?

16 A. Yes. The revenue and sales
17 accelerated -- declines, accelerated.

18 MR. VAUGHAN: This is probably a
19 good breaking point. You said 2:00, 2:15?

20 THE WITNESS: Yes.

21 (Luncheon recess.)

22 THE COURT REPORTER: We are back on
23 the record.

24 BY MR. VAUGHAN:

25 Q. Mr. LeBow, we've spent some time
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1 over the last couple of days talking about Philip
2 Morris' payment of legal fees for Liggett in
3 defense of smoking and health cases.

4 Do you recall whether there was
5 correspondence between Philip Morris and Liggett
6 and/or Brooke with respect to those matters?

7 A. Yes.

8 Q. Do you recall, insofar as the terms
9 of the arrangement were concerned, that Philip
10 Morris agreed as one of the terms that Liggett
11 would control the defense of its cases?

12 A. Liggett would have the final say,
13 yes.

14 Q. And be able to direct the
15 activities of Mr. Kearney and the other lawyers
16 defending the case?

17 A. Yes.

18 Q. After the first settlement was
19 reached and Mr. Kearney and his firm resigned, and
20 later, Mr. Murray resigned, did there come a time
21 where someone from Mr. Kasowitz's office
22 approached Mr. Kearney about representing Liggett
23 again in some other cases?

24 A. Yes.

25 Q. And did they talk with you before
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1 they did that?

2 A. They may have, yes.

3 Q. And was an arrangement reached with
4 Mr. Kearney and Latham & Watkins for Mr. Kearney
5 and Latham & Watkins to defend Liggett's interests
6 in litigation, along with the Kasowitz firm?

7 A. This was in a couple very
8 individual cases, couple that they had done a lot
9 of work on, not in any of the class actions or any
10 of the Attorneys General or any of the major
11 cases, just one or two, maybe top three, very
12 limited cases that the other companies were still
13 involved in, too.

14 Q. And the Kasowitz firm was satisfied
15 with that approach?

16 A. Well, it was -- it was -- there was
17 really no choice, because they had the knowledge
18 of those cases. We were kind of in a box,
19 theoretically had the knowledge, and they weren't
20 important cases at all. We didn't expect anything
21 to happen with them, because we had a settlement
22 agreement.

23 Q. As part of that settlement
24 agreement -- well, the settlement agreement did
25 cover the specific cases that Mr. Kearney and

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1 Latham & Watkins were employed to assist the
2 Kasowitz firm in, did it?

3 A. Well, if the Castano thing went
4 through, it would have, as far as smoking
5 addiction was concerned.

6 Q. Well, the Castano settlement
7 applied to the national class action, did it not?

8 A. Yeah, but the class action then
9 overtook, you know, the various individuals.

10 Q. But individuals were allowed to opt
11 out of that class and pursue their own claims,
12 weren't they?

13 A. I don't recall -- probably. I
14 think they were, yes.

15 Q. And in any event, once the Castano
16 class action was decertified, these other cases
17 continued to exist?

18 A. Right, there were still a couple of
19 small cases around, right.

20 Q. And under the terms of that
21 arrangement that was reached, Philip Morris was to
22 pay the legal fees?

23 A. Yeah, they continued paying some
24 minor legal fees for some minor cases.

25 Q. Well, they agreed to pay the legal
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1 fees for Mr. Kearney and Latham & Watkins to
2 assist in the defense of the cases?

3 A. Yes, because they had an interest
4 in those cases, Philip Morris, but they would not
5 pay Mr. Kasowitz's fees. They made that very
6 clear.

7 Q. They had an interest in those cases
8 to see that sufficient resources were available to
9 defend the cases properly?

10 MR. BENSON: Objection.

11 A. I believe they had their own
12 interests at heart, not my interests at heart at
13 all at that point in time. They made that very
14 clear. So, this then brought into question, who
15 was Mr. Kearney really working for?

16 BY MR. VAUGHAN:

17 Q. And their own interests being that
18 they didn't want any tobacco company to lose a
19 lawsuit simply because it didn't have enough money
20 to defend itself?

21 A. Why would they care about that?

22 Q. That was the interest you
23 understood they had?

24 A. I don't know, you have to ask them
25 what their interest was.

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1 Q. No one communicated to you what
2 their interest was?

3 A. No, not in detail.

4 Q. Kasowitz never told you why Philip
5 Morris was paying the legal fees for Liggett?

6 A. They were interested in making sure
7 there was some defense. That was it, but why they
8 care, I don't know. They don't care about me
9 today, so why would they care about me then?

10 Q. Let me show you what we have marked
11 as LeBow Exhibit number 1363.

12 (Plaintiffs' Exhibit 1363 was
13 marked for identification.)

14 BY MR. VAUGHAN:

15 Q. It's the Castano settlement
16 agreement.

17 A. Uh-huh.

18 Q. Is that document -- feel free to
19 flip through it, if you wish to do so -- the
20 settlement agreement -- the first settlement
21 agreement that you reached, namely, with the
22 Castano Plaintiffs?

23 A. It appears to be, yes.

24 Q. Okay. If I could turn your
25 attention to paragraph D on page 2, does that

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1 contain a paragraph to the effect that Liggett and
2 Brooke continue to deny any liability or any
3 wrongdoing with respect to smoking and health
4 issues?

5 A. That's what it says.

6 Q. And that paragraph was in it when
7 you signed it, wasn't it?

8 A. Uh-huh.

9 Q. And you agreed with it being in
10 there, didn't you?

11 A. I didn't disagree with it. Until
12 this was -- until the class was certified and the
13 deal approved, that was a normal thing to put in
14 an agreement.

15 Q. And then if you would, look to
16 paragraph G down below.

17 Let me see that for one second,
18 Mr. LeBow, so I can ask you a question about it.

19 A. Uh-huh.

20 Q. And that paragraph acknowledges, in
21 part, that certain reasons for trying to settle
22 the case, notwithstanding the denials of
23 liability, were the expense of proceeding to trial
24 and the uncertainty as to outcome?

25 A. Right, but that was our -- our

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1 expense. I mean, Philip Morris was not going to
2 pay our fees in this case, so it was my risk.

3 Q. But that paragraph indicated the
4 reasons that you were going forward with the
5 settlement of that case?

6 A. It was one of the reasons.

7 Q. The agreement doesn't set forth any
8 other reasons besides those two, does it, the
9 expense and the uncertainty?

10 A. Yeah -- yes. It says, "We support
11 the public interests in preventing smoking, buying
12 or promotion of smoking to children and
13 adolescents," paragraph V -- you're ignoring that
14 one very conveniently.

15 It says that "The FDA has proposed
16 certain new regulations purportedly concerning the
17 sale and distribution of nicotine" --

18 THE COURT REPORTER: I'm sorry.

19 A. I'm sorry. "Has proposed certain
20 new regulations purportedly concerning the sale
21 and distribution of nicotine containing
22 cigarettes -- nicotine-containing cigarettes and
23 smokeless tobacco products to children and
24 adolescents."

25 That's it. So, you know, we

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1 recognize some of that public health aspects of
2 this, too.

3 BY MR. VAUGHAN:

4 Q. But in that particular agreement,
5 you didn't make any statements about smoking
6 causing disease, did you?

7 A. No, but we agreed to many of the
8 FDA rules and regulations, the first time that
9 anyone else had done that.

10 Q. And you didn't waive any privileges
11 with respect to documents in that agreement, did
12 you?

13 A. Well, at this time, as I told you
14 before, I didn't see any of the documents. I had
15 no idea what was in them. They were still in the
16 hands of the older -- you know, of the other
17 attorneys.

18 Q. Okay. Now, if you would look to
19 paragraph -- to page 6 of that document, the last
20 paragraph on that page defines "future affiliate,"
21 does it not?

22 A. Correct.

23 Q. And it defines it in such a way
24 that a future affiliate of Liggett and/or Brooke
25 could be RJR Nabisco or Reynolds Tobacco Company?

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1 A. Couldn't -- yes, that's correct --
2 well, I don't -- okay.

3 Are they Defendants, both of them,
4 in Castano? I don't know.

5 Q. If they were Defendants in Castano,
6 they would be included; correct?

7 A. Yes. If General Motors was a
8 defendant in Castano, it could be a future
9 affiliate, also.

10 Q. General Motors wasn't a defendant
11 in Castano, isn't it?

12 A. Not to my knowledge, but I'm not
13 sure which of RJR was.

14 Q. You recall that at least one of
15 those companies, Reynolds Tobacco Company or RJR
16 Nabisco was a defendant?

17 A. Right, one of those, yes.

18 Q. And, in fact, those were the
19 companies you had in mind with respect to future
20 affiliates?

21 A. No, as I said before, we had
22 Lorillard in mind, we had Brown & Williamson in
23 mind, we had UST and we had American Tobacco also
24 in mind, is another one. There were four or five
25 other companies in mind.

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1 Q. You were willing to consider all
2 those companies?

3 A. Absolutely.

4 Q. Now, if you will turn to
5 paragraph -- page 14 --

6 MR. BENSON: Off the record for a
7 second.

8 (Discussion off the record.)

9 THE COURT REPORTER: We are back on
10 the record.
11 BY MR. VAUGHAN:

12 Q. If you'll look at page 14,
13 paragraph 4.2 -- that's a fairly short paragraph,
14 Mr. LeBow. How about just reading that out loud
15 for the record?

16 A. "Plaintiffs and the settlement
17 class shall not seek to enjoin a spinoff or like
18 disposition of the stock of the Nabisco Holdings,
19 Inc., by RJR Nabisco Holdings Corp. The event
20 that a slate of nominees proposed by Brooke Group
21 for election to the RJR Nabisco Holdings Corp.
22 board of directors is elected."

23 Q. Now, that particular paragraph was
24 focused specifically on RJR Nabisco, wasn't it?

25 A. That's correct.

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1 Q. And it was focused specifically --
2 or had it contemplated the proxy fight that you
3 were then involved in?

4 A. We were being told by RJR, one of
5 the things we were told as part of this whole
6 process was that RJR was saying they could not
7 spin off Nabisco, so here was a case where they
8 could spin off Nabisco if our board was elected,
9 and we would then go and spin off Nabisco.

10 Q. And that was a provision you had
11 put in the agreement?

12 A. That's correct.

13 Q. And that provision allowed you to
14 go back to the shareholders and say, "If you elect
15 our board, you can spin off Nabisco"?

16 A. Well, the shareholders had just
17 said by -- for the first time in American history
18 with a fortune 100 company, it's the first time in
19 American history a fortune 100 company, the
20 shareholders had just said they wanted to spin off
21 Nabisco, and the management of RJR Nabisco was
22 saying, "You can't do it because there could be an
23 injunction."

24 It was pretty obvious, you know,
25 someone should try and get -- put that argument to

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1 bed, which is what we did.

2 Q. So, you reached that settlement
3 agreement and went back to the shareholders and
4 said, "Elect our board and there are no injunction
5 problems"?

6 A. Correct.

7 Q. And the shareholders did not elect
8 your board?

9 A. That's correct.

10 Q. Now, earlier today, you were asked
11 about what you testified in Mr. Rosenblatt's
12 deposition -- well, strike that.

13 Earlier today, you were asked about
14 your testimony concerning addiction in
15 Mr. Rosenblatt's deposition in 1993.

16 Do you recall that?

17 A. Yeah.

18 Q. And I believe you said that what
19 you recalled testifying to was that, based on your
20 personal experience in being able to quit, you did
21 not believe that smoking was addictive; is that
22 right?

23 A. Yeah.

24 Q. Actually, you went a little further
25 than that, didn't you, Mr. LeBow?

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1 A. I don't recall.

2 Q. Do you have before you the
3 deposition that was taken by Mr. Rosenblatt?

4 A. Yes.

5 Q. Would you turn, please, to page
6 24.

7 Now, feel free to look at the
8 earlier page if you want to, but my question to
9 you about the series of questions leading up to
10 what I'm going to ask you about is simply whether
11 Mr. Rosenblatt had asked -- had taken you through
12 a series of questions about your personal efforts
13 to quit and your success in doing so?

14 A. He is just asking me here, you
15 know, how many packs do I smoke a day and for how
16 long.

17 Q. And then he asked you about
18 quitting, did he not?

19 A. Well, the next page, yeah, I guess.

20 Q. Are we up to 24 now?

21 A. Yeah -- I'm sorry -- no, I don't
22 have a page 24. I don't have a page 24, I've got
23 23 and 25.

24 Q. Okay.

25 A. Sorry about that.

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1 Q. All right.
2 MR. BENSON: It's not your fault.
3 A. Well, everything is my fault.
4 BY MR. VAUGHAN:
5 Q. Go to page 25, then.
6 A. Okay.
7 Q. And he was asking you about your
8 quitting at the first part of that page.
9 A. Uh-huh.
10 Q. And he says, beginning at line 14,
11 question, "And you were able to do it just like
12 that," indicating, and presumably, he snapped his
13 fingers or somehow gestured that it was a quick
14 stop; correct?
15 A. My first stop quitting, yes --
16 Q. And you answered --
17 A. -- stop smoking, rather.
18 Q. And you answered, "Just like that"?
19 A. I stopped, just like that.
20 Q. And then you were asked another
21 question, "You are a strong-willed guy"; is that
22 right?
23 A. That's what it says.
24 Q. And you answered, "Thank you"?
25 A. Uh-huh.

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1 Q. Is that a yes?
2 A. That's what it says, yes.
3 Q. Yeah. And then you were asked the
4 question, "Millions of people say they can't do
5 that, they want to quit and they can't," and there
6 was an objection from Mr. Kearney, and
7 Mr. Rosenblatt continued with the question, "Do
8 you buy that," did he not?
9 A. Yes.
10 Q. And he asked that again by saying,
11 "Do you buy that, that there are millions of
12 people who would love to quit smoking, but say
13 they can't?"
14 He asked you that question, didn't
15 he?
16 A. Yes.
17 Q. And you answered, "No, I don't buy
18 that"; is that right?
19 A. Uh-huh.
20 Q. And he asked you why; is that
21 right?
22 A. Uh-huh, yes.
23 Q. And you answered at that time,
24 "Because I have seen myself and other people quit
25 like that," again, indicating something quickly?

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1 A. Uh-huh.

2 Q. And then the next question was,
3 "But have you not also seen the other side of the
4 coin, people who really want to quit and who
5 can't, they are not as strong, they are not as
6 strong as you and the other people that can quit
7 just like that"; were you asked that question?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes.

11 Q. Okay. And did you answer it, "No,
12 I have seen more the other way"?

13 A. Meaning, I have seen other people,
14 also, who can't quit, but more who could quit.

15 Q. And then the next question --

16 A. That's a personal experience thing.

17 Q. And so in order to be sure he had
18 nailed it down, he then asked you, did he not,
19 "You don't believe that tobacco is addictive?"

20 He asked that question, didn't he?

21 A. Again, based on my personal
22 experience.

23 Q. Did he ask you that question?

24 A. He asked that question.

25 Q. And your answer was, "No, I do

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1 not"?

2 A. At that time, that's what I
3 believed.

4 Q. Now, coming forward to 1996 and as
5 part of the --

6 MR. BENSON: Mr. Vaughan, can I ask
7 if you're going to take snippets of testimony out
8 of context from a deposition, that you include the
9 entire context and read the next several
10 questions?

11 MR. VAUGHAN: Well, you're welcome
12 to come back, Mr. Benson, and ask whatever
13 questions that you want to ask from the
14 deposition.

15 MR. BENSON: Well, I think if
16 you're just going through and asking whether
17 questions and answers were in the transcript,
18 again, you should -- you should put it in the
19 context of -- that it's in, you know, and not just
20 leave off the last few questions when it suits
21 your purpose to leave them out.

22 MR. VAUGHAN: Well, I object to the
23 comments, and I don't believe that's proper in the
24 context of these depositions. You're welcome to
25 cross examine as you wish to do so.

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1 BY MR. VAUGHAN:

2 Q. Continuing, Mr. LeBow, to 1996, and
3 specifically, to the proxy -- well, to the proxy
4 fight -- let me have this next document marked by
5 whatever number we are up to at this time.

6 (Plaintiffs' Exhibit 1364 was
7 marked for identification.)

8 THE COURT REPORTER: Thirteen
9 sixty-four.

10 BY MR. VAUGHAN:

11 Q. Do you recognize that document,
12 Mr. LeBow?

13 A. I don't recognize it offhand, but
14 this is apparently one of our documents.

15 Q. Do you believe it to be one of the
16 proxy letters that was sent out in the course of
17 your battle for --

18 A. Yes, it appears to be one. It also
19 appears to be the same one that Mr. Grossman
20 questioned me on extensively in the Broin
21 deposition, so I don't know why you have to keep
22 going over the same stuff constantly wasting
23 everybody's time.

24 Q. So, you do remember the document,
25 then?

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1 A. I vaguely remember it.
2 Q. Let's turn to page 4 of that
3 document.
4 A. These documents aren't paged --
5 aren't numbered.
6 Q. If you would --
7 A. I should count?
8 Q. If you would, please.
9 A. One, two, three -- four, okay. It
10 does have a four in it.
11 Q. Okay. Would you look at the last
12 paragraph on that letter --
13 A. Uh-huh.
14 Q. -- on that page.
15 A. Right.
16 Q. Now, in that particular
17 solicitation to RJR Nabisco's shareholders, you
18 say, do you not, in -- on April 5, 1996, that
19 "Together with the other tobacco companies, we
20 believe that the addiction theory is flawed"; do
21 you say that?
22 A. That's what the letter says, yes.
23 Q. Does it also go on to say, "Tens of
24 millions of former smokers who chose to stop
25 smoking were able to do so successfully and public
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1 health officials from the Surgeon General of the
2 United States on down readily acknowledge that it
3 is possible to stop smoking"?

4 A. Well, millions of people have
5 stopped smoking, but millions of people haven't,
6 also.

7 Q. And that was a statement of your
8 and Brooke and Liggett's position as of April 5,
9 1996; is that right?

10 A. Again, we have not reviewed any of
11 the documents prior to this.

12 Q. But you had heard the Plaintiffs'
13 claims made during and before settlement
14 negotiations commenced to settle the Castano
15 lawsuit, hadn't you?

16 A. Yes.

17 Q. Now, before lunch, we had gotten
18 down and through the settlement that you reached
19 with the Castano Plaintiffs and the results, or at
20 least some of the results of that settlement?

21 A. Correct.

22 Q. And we talked about a continuing
23 deterioration in the financial condition of
24 Liggett -- in fact, I believe you said it
25 accelerated after that settlement?

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1 A. After the first settlement, yes.
2 Q. While that condition of the company
3 or the financial condition of the company was
4 getting worse, the number of cases was increasing,
5 wasn't it?
6 A. What kind of cases?
7 Q. Attorney Generals cases.
8 A. Oh, yes.
9 Q. They went from five or six cases, I
10 think we said before, to double digits?
11 A. But Liggett was not mentioned in
12 every one of those cases.
13 Q. Not in every one, but they were
14 mentioned in enough to cause --
15 A. Some.
16 Q. -- to cause significant financial
17 concern for you as CEO of Brooke?
18 A. Not immediate concern, we had other
19 concerns besides that. Those trials were years
20 off, so it was not an immediate concern.
21 Q. But you had more pressing concerns,
22 but you also had concerns about those cases?
23 A. On the basis of them being a
24 concern, yes, they were a concern, yes.
25 Q. And, in fact, some of those trials
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1 were scheduled to come to trial within a year or
2 two, weren't they?

3 A. Yes.

4 Q. So, you concluded that, from a
5 business standpoint, you needed to settle those
6 cases?

7 A. I think, just like your clients,
8 included the same thing -- nothing new here.

9 MR. VAUGHAN: Motion to strike as
10 nonresponsive.

11 BY MR. VAUGHAN:

12 Q. You concluded that Liggett needed
13 to settle those cases?

14 A. And Liggett needed to do the right
15 thing.

16 Q. And that was before you had looked
17 at any documents?

18 A. No.

19 Q. When did you commence looking at
20 documents?

21 A. Within a month or so after the
22 first settlement -- not me again, my attorneys.

23 Q. Now, we went through that
24 yesterday, so we're not going to go back through
25 it again right now.

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1 A. Okay.

2 Q. But you undertook to try to reach a
3 settlement with the Attorneys General?

4 A. Well, part of our original deal in
5 March of '96, we had let -- we, by definition,
6 knew there were more cases to be settled. We
7 started that immediately. That was nothing new
8 there. It had nothing to do with any new cases.
9 I mean, I think a week after the March, '96
10 settlement, we had a meeting with Texas to try and
11 settle that, and, you know, we had a commitment
12 from the other Attorney General that did settle
13 with us that they would help us settle the rest --
14 the other lawsuits.

15 Q. So, you started trying to settle
16 those Attorneys General cases right after the
17 Castano case?

18 A. No, right after the March, '96
19 settlement agreement, immediately.

20 Q. Right after the settlement of that
21 case?

22 A. Absolutely. That was part of the
23 original deal.

24 Q. So, that was itself still before
25 you commenced any internal review of any kind of

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1 documents?

2 A. Correct.

3 Q. So, you had made that decision, not
4 knowing what was in those documents or what
5 Liggett scientists would say, but had made that
6 decision because it made business sense to you to
7 do so?

8 MR. BENSON: Objection.

9 A. Well, I made that decision to
10 settle all lawsuits if I could in March of '96.

11 Now, we had one meeting about a
12 week after that, and then there were no meetings
13 after that, no conversation for quite a few months
14 while we studied the documents.

15 BY MR. VAUGHAN:

16 Q. Now, when you got to the
17 settlement -- to the actual settlement with the
18 Attorneys General --

19 A. The second settlement?

20 Q. The second settlement, the one in
21 March of 1997.

22 A. Correct.

23 Q. That settlement, I believe you
24 testified yesterday, contained some financial
25 terms?

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1 A. Yes.

2 Q. And those financial terms were
3 terms that you described as being necessary for
4 Liggett to survive?

5 A. Yes.

6 Q. Actually, reaching a settlement
7 with the AGs was necessary for Liggett to survive,
8 wasn't it?

9 A. Everything to survive, yes.

10 Q. Now, as far as the financial terms
11 were concerned, do you recall what Liggett was to
12 pay in dollars?

13 A. Assuming we got full protection
14 from all the Attorneys General and all the -- and
15 under a class action, which was being filed in
16 Alabama, we would pay 27 and a half percent of our
17 pretax earnings.

18 Q. Which were how much for 1996?

19 A. Negative.

20 Q. How much would that be for 1997?

21 A. A very small amount. Obviously, I
22 don't know the answer yet, because '97 is not over
23 with.

24 Q. Would you agree, Mr. LeBow, that
25 the Attorneys General and their lawyers settling

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1 with you in this second settlement knew that
2 Liggett was in difficult financial circumstances?

3 A. It was all public knowledge -- no
4 secrets.

5 Q. And would you agree that the
6 dollars they might take in from Liggett was not
7 the primary reason they settled in March of 1997
8 with Liggett?

9 MR. BENSON: Objection.

10 A. I think you have to ask them that
11 question, but they have pretty much said that to
12 be true.

13 BY MR. VAUGHAN:

14 Q. And you have no reason to doubt
15 that, knowing your financial condition and being a
16 businessman, do you?

17 A. No reason to doubt that.

18 Q. But what you were able to provide
19 in March of 1997 was some assistance in the
20 pursuit of their lawsuits?

21 A. I was -- I was able to provide the
22 truth for the first time in this country.

23 Q. You were able to provide them
24 assistance in pursuing their lawsuits?

25 A. You call it assistance, I call it
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1 the truth.

2 Q. Well, you weren't willing, I think
3 you told us earlier, to provide the truth to
4 states that didn't settle with you, were you?

5 A. But once it got through most of the
6 states -- these states weren't going to trial
7 anyhow for months -- for years, so it made no
8 difference.

9 Q. You said you didn't waive any
10 privileges to states that didn't settle with you,
11 didn't you?

12 A. Well, this was the intent to get
13 them in. If you recall, if you read the document
14 correctly, this -- there was no provision made for
15 states who had not signed, so we had to have
16 something for them to come and sign. They were
17 not part of the class action either, they had the
18 right to opt out in the class action.

19 Q. Mr. LeBow, if your only concern
20 were public health, there was nothing to prevent
21 you from coming and saying exactly what you said,
22 turning over documents, doing whatever you wanted
23 to do to assist the Attorneys General, without
24 reaching a settlement agreement with them, was
25 there?

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1 MR. BENSON: Objection. You're
2 continually mischaracterizing testimony.

3 A. Yes, because those documents could
4 in court be used against us and bankrupt Liggett.
5 BY MR. VAUGHAN:

6 Q. So, you wanted to make sure Liggett
7 was protected?

8 A. Absolutely, no question about it.

9 Q. And in order to obtain that
10 protection, you had to agree to do certain things?

11 A. As part of a deal. It wasn't, you
12 know -- it was all a whole, involved, complicated
13 deal.

14 Q. And one of those -- and these terms
15 were identified by the Attorneys General, what
16 they wanted, weren't they?

17 A. They were negotiated.

18 Q. Well, they came up with the idea of
19 having you waive privileges on your documents,
20 didn't they?

21 A. No, I don't think so. No, I think
22 Kasowitz's firm came up with that idea.

23 Q. It was offered as an inducement for
24 them to settle?

25 A. You call it what you want to call
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1 it, but it was our offer, not their demand.

2 Q. And it was offered as an inducement
3 if they were to give you a release from liability?

4 A. That's correct, just like you
5 offered 368 billion dollars. You offered money, I
6 offered documents. That's the difference. I
7 offered the truth and your clients offered money,
8 and it's not even their money, but that's a
9 different issue.

10 MR. VAUGHAN: Motion to strike all
11 that was nonresponsive.

12 BY MR. VAUGHAN:

13 Q. Now, the Attorneys General, once
14 this was raised by the Kasowitz firm or by whoever
15 it was raised, insisted that the provision be in
16 the document, didn't they, that you would waive
17 your privileges?

18 A. Oh, yeah, sure.

19 Q. In addition, you agreed to make a
20 public statement, did you not?

21 A. Correct.

22 Q. Let me show you the document that
23 we have previously marked as Plaintiffs' Exhibit
24 number 13 -- I think it says 58. It's the
25 settlement agreement, or at least a copy of a

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1 settlement agreement of the Attorneys General
2 case.

3 MR. BENSON: It's not a copy. We
4 object to the use of the document.

5 BY MR. VAUGHAN:

6 Q. Let me show you a portion of that
7 document beginning on page -- it's eight on this
8 particular document, paragraph four.

9 I want to direct your attention to
10 a statement at the bottom of that page, and my
11 question to you, Mr. LeBow, is whether this
12 particular document is an accurate copy of the
13 settlement agreement or not?

14 MR. BENSON: Objection.

15 A. I have been advised --

16 BY MR. VAUGHAN:

17 Q. Let me finish my question.

18 A. I'm sorry, go ahead.

19 Q. Is the statement contained at the
20 bottom of the page the statement that you agreed
21 to provide as part of the settlement with the AG?

22 MR. BENSON: Objection. If you're
23 going to ask him about a document, you should at
24 least give him a real copy of it.

25 A. I don't know if it's a full

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1 statement. It looks to me like it's not totally
2 correct. I'm not totally sure. It looks kind of
3 short to me. I thought the settlement -- the
4 statement was a lot longer than this.

5 BY MR. VAUGHAN:

6 Q. Would you read what is there and
7 tell me whether what is there -- whether -- if
8 what is there was part of the settlement
9 agreement?

10 MR. BENSON: Objection.

11 A. I believe it was part of the
12 settlement agreement.

13 BY MR. VAUGHAN:

14 Q. Now, let me direct your attention
15 to the last -- you're welcome to read for the
16 record all of it, but I'm specifically concerned
17 with the part that says, "We at Liggett,"
18 beginning halfway down, if you would read for the
19 record the rest of that paragraph.

20 MR. BENSON: Objection.

21 A. "We at Liggett know and acknowledge
22 that as the Surgeon General, respected medical
23 researchers have found, cigarette smoking causes
24 health problems, including lung cancer, heart and
25 vascular disease and emphysema. We, at Liggett

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1 also know and acknowledge that as the Surgeon
2 General, the FDA and respected medical
3 researchers --

4 THE COURT REPORTER: I'm sorry.

5 A. "And respected" --

6 THE COURT REPORTER: Could you --

7 A. I'm sorry. "We at Liggett also
8 know and acknowledge that as the Surgeon General,
9 the Food and Drug Administration and respected
10 medical researchers have found, nicotine is
11 addictive."

12 BY MR. VAUGHAN:

13 Q. Both of those sentences began this
14 "We at Liggett"; is that right?

15 A. Correct.

16 Q. Did you go talk to the management
17 at Liggett?

18 A. I'm trying to remember now. This
19 is -- I believe Mr. Fulford was a party to this.
20 He saw all this.

21 Q. Did you -- we can go back through
22 the depositions if you wish.

23 Did you not tell Mr. Grossman that
24 you handled the settlement of this case?

25 A. Yeah, but I negotiated most of the
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1 settlement, but Mr. Fulford was part of this. He
2 saw it prior to it being signed. He was kept
3 apprised of what was happening. He did not -- he
4 did not participate in the negotiations.

5 Q. Is it your testimony that
6 Mr. Fulford read and affirmatively signed off on
7 that statement?

8 A. No, he did not sign anything, I
9 signed it.

10 Q. When I say "signed off," I mean,
11 did he tell you that he agreed to that statement?

12 A. I don't know if he did or not, but
13 he was aware of it, let's put it that way.

14 Q. Did you consult with anyone else at
15 Liggett, scientists or otherwise, as to whether
16 Liggett -- the people at Liggett agreed with what
17 you were saying when you said "We at Liggett"?

18 A. No, I did not.

19 MR. BENSON: Objection.

20 A. No, I did not.

21 BY MR. VAUGHAN:

22 Q. I believe you said yesterday, also,
23 that you found it to be -- Liggett was comfortable
24 operating under the FDA; is that right?

25 A. Yes.

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1 Q. Given Liggett's market share and
2 its accelerating decline in market share, that's
3 not a particular problem for Liggett, is it?

4 MR. BENSON: Objection.

5 THE WITNESS: What's not a
6 particular problem?

7 MR. VAUGHAN: Operating under FDA.

8 A. It would be as much a problem to us
9 as anyone else, why not?

10 Sure, it could be a problem, lot
11 of, you know, regulations and reporting
12 requirements. I don't know all the regulations
13 yet. I don't think anyone knows what's going to
14 come out of the new settlement, the settlement
15 agreement you gentlemen are negotiating.

16 BY MR. VAUGHAN:

17 Q. What you agreed to operate under
18 was the FDA regulations as of the time that you
19 signed the agreement, wasn't it?

20 A. No.

21 MR. BENSON: Objection. Which
22 agreement are you talking about?

23 MR. VAUGHAN: The second
24 agreement.

25 A. No, we agreed to operate under the
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1 FDA regulations that had been proposed by the FDA,
2 not in effect.

3 BY MR. VAUGHAN:

4 Q. You had no problem with the
5 advertising provisions, did you --

6 A. No.

7 Q. -- because Liggett doesn't
8 advertise?

9 A. Well, excuse me. We had a problem
10 with it, as we did in the first agreement,
11 providing it applied to all the tobacco companies,
12 not just us. When and if it applied to all the
13 tobacco companies, we agreed with it.

14 Q. Since there is some question, and
15 there was a question raised yesterday about this
16 particular document we have shown you as being the
17 Attorneys General agreement, and specifically,
18 whether that provisions -- there are provisions in
19 there that create an incentive for other tobacco
20 companies to merge with your company, let me
21 direct your attention to the 10-K you
22 identified -- excuse me -- a 10-Q you identified
23 earlier as LeBow Exhibit 1362, and ask you to look
24 at the paragraph on the bottom of page 23.

25 A. Right.

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1 Q. That refers to both settlement
2 agreements, doesn't it?

3 A. Yes.

4 Q. And you're welcome to look at the
5 earlier pages, if you wish to do so.

6 A. That's okay.

7 Q. But those settlement agreements are
8 the ones we have been talking about, the one on
9 the Castano case and the one with the AGs?

10 A. Correct.

11 Q. Does that paragraph -- excuse me,
12 Mr. LeBow -- provide that under both settlement
13 agreements, any other tobacco company defendant
14 except Philip Morris merging or combining with
15 Liggett or BGL prior to the fourth anniversary of
16 the settlement agreements would receive certain
17 settlement benefits, including limitations on
18 potential liability and not having to post a bond
19 to appeal any future adverse judgment?

20 A. That's what it says.

21 Q. Does it also say, in addition,
22 within 120 days following such a combination,
23 Liggett would be required to pay the settlement
24 fund 25 million dollars?

25 A. Correct.

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1 Q. And does it also provide that the
2 both the Attorneys General and the nationwide
3 class have agreed not to seek an injunction
4 preventing any defendant tobacco company combining
5 with Liggett or BGL from spinning off any of its
6 affiliates which are not engaged in the domestic
7 tobacco business?

8 A. Correct.

9 Q. And does that 10-Q accurately
10 summarize those provisions of the agreement?

11 A. Well, you got to take -- you've got
12 to read it correctly. I mean, it says certain
13 settlements, if you give it back to me.

14 Q. Certainly.

15 A. You're reading it -- you're reading
16 it, and maybe, you know, it's poorly written, but
17 it says "certain settlement benefits," and what it
18 should say, "including some limitations on
19 potential liabilities."

20 Q. What does it say?

21 A. It just says, "including
22 limitations," it doesn't say, "including certain
23 limitations." I mean, the word "certain" applies
24 to both things. You're not -- you're ignoring the
25 word "certain," which maybe should have been in

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1 here. We could argue that from now or forever.

2 Q. I didn't ignore a word that was in
3 there, did I?

4 A. No, but if you read the actual
5 agreement, it's clear in the actual agreement.
6 This is a summary written of the actual
7 agreement. The actual agreement is very clear
8 that limitations on potential liability, you know,
9 is not limited for the tobacco company.

10 Q. But there are limitations on the
11 liability of the company?

12 A. No, it says -- no, it says the
13 company would receive certain settlement benefits,
14 including limitations.

15 What limitations are defined here,
16 and, yes, there are certain limitations on
17 liability, but limitations on liability are
18 limited to, if you read this and if you ever get
19 the right copy and read it, are limited to the
20 parent company only, not to the tobacco company.

21 Q. Yeah. But the intent of those
22 provisions was to create an incentive for those
23 companies to join with you?

24 A. Not the tobacco companies, the
25 parents.

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1 Q. The parent companies?

2 A. Yes, the parent companies, if they
3 wanted to get some of these other benefits, but if
4 they have no liability and they don't lose any
5 cases, or they don't lose any of these
6 multi-billion dollar cases that they are up
7 against right now, this has no meaning, has no
8 value, zero value. I mean, if ever they told me
9 they are going to win every case, they have been
10 for 40 years, it has no meaning whatsoever.

11 Q. When you settled the Castano class
12 action, did you not indicate in that settlement
13 agreement that it was not the liability you were
14 concerned about, but the risk of an adverse
15 verdict and the cost of achieving a favorable
16 outcome?

17 MR. BENSON: Objection.

18 A. No. I mean, say that again.
19 You're not very clear.

20 BY MR. VAUGHAN:

21 Q. Didn't you say in your own Castano
22 agreement that what was driving you was not that
23 you admitted liability, but that you wanted to
24 avoid legal expenses and the uncertainty
25 associated with the outcome?

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1 A. Now you're talking about just
2 Liggett; that's correct for Liggett. Again, that
3 was before we saw the documents.

4 Q. Would you agree, Mr. LeBow, that
5 you have an incentive in this and other AG
6 lawsuits in cooperating with the AGs, to -- in the
7 form of a competitive advantage that your company
8 has over the other tobacco companies in the event
9 that an adverse verdict is rendered against those
10 companies?

11 A. On the basis that we have a
12 settlement and the other companies do not; of
13 course, we have a settlement, but they could
14 settle, too. What's preventing them?

15 Q. So, it's in your best interests to
16 help the Attorneys General in this case?

17 A. I have no interest in helping the
18 Attorneys General in these cases. Why would I
19 have an interest?

20 Q. Didn't you just say you have an
21 interest in these other companies losing these
22 Attorneys General lawsuits?

23 A. No, you said that, I didn't say
24 that. Have her read back what I said.

25 Q. Let's just find where you did say

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1 it, sir.

2 Let me turn your attention back to
3 the deposition that was taken on July 18, 1997.

4 If you look at page 162 -- well,
5 let's start a little bit earlier.

6 If you'll look back at 159 and come
7 forward, possibly even 158 if you want to to get
8 the context, Mr. Grossman was asking you, was he
9 not, why certain provisions under paragraph
10 seventeen were put into the agreement.

11 A. Yeah, okay. What's your question?

12 Q. And on page 159 at line
13 twenty-four, he asks you, "And you asked for this
14 provision, which was the bond provision, so that
15 if another tobacco company were to lose a very big
16 judgment, you could make a proxy run at that
17 company and have the asset during the proxy run of
18 not having to make -- to have that tobacco company
19 or its parent or subsidiaries or affiliates post a
20 bond; is that correct?"

21 That's what he asked you, wasn't
22 it?

23 A. That's why that provision was put
24 in, yes.

25 Q. That's what he asked you, wasn't
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1 it?
2 A. Yes, but at this time.
3 Q. And he -- is that right?
4 A. Go ahead, yes.
5 Q. And your answer was, "That's
6 correct"?
7 A. That's correct, that was put in for
8 that.
9 Q. And then he said, did he not,
10 "Again, paragraph 17.3 is of benefit to you, only
11 if the other tobacco companies were to lose the
12 litigation; is that correct?"
13 Did he ask you that?
14 A. Yes.
15 Q. And did you answer, "That's
16 correct"?
17 A. "Paragraph 17.3 has some benefit,"
18 right.
19 Q. And then he said, "Now, paragraph
20 17.4, who asked for that provision," and you
21 answered, "Again, These are all the same," did you
22 not?
23 A. Yes.
24 Q. And you went on to say, "I'll
25 concede these are all the same, what they say,"
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1 and you asked, "Do we have to go through each one
2 of these," correct?

3 A. Correct.

4 Q. And he said, did he not, "No, I
5 won't. I'm just going through two more. As a
6 matter of fact, 17.4, you asked for; is that
7 correct," and you answered, "I'm trying to
8 remember. I'm sure we asked for it. I think it
9 just relates to -- it's some clarification of 17.2
10 B or something"?

11 A. I don't know what it is, which one
12 it is, but go ahead.

13 Q. And then he asked you, "17.4 again
14 is an asset," and you answered, "Correct," is that
15 right?

16 A. Correct.

17 Q. And he went on to say, "Asset to
18 you only if the other tobacco companies lose, and
19 you answered "Correct," is that right?

20 A. Right.

21 Q. And you answered "Correct"; is that
22 right?

23 A. Yes.

24 Q. And then he went through the same
25 analysis on 17.10 and 17.9, I believe; is that

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1 right?

2 A. Yes, but this is all -- all this is
3 moot right now because you have a settlement
4 agreement. What does this have to do with the
5 settlement agreement? You have a settlement
6 agreement. None of these things have any validity
7 right now.

8 MR. VAUGHAN: Now, motion to strike
9 that part of the answer.

10 BY MR. VAUGHAN?

11 Q. Now, Mr. LeBow, moving on to page
12 162, line 16, you were asked, were you not, "Based
13 on all of this, you have an economic incentive to
14 see the other tobacco companies lose pending
15 litigation against Attorneys General; isn't that
16 correct?"

17 You were asked that question,
18 weren't you?

19 A. Yes.

20 Q. And you answered, did you not,
21 "Well, I would think even on a competitive basis,
22 if I have a settlement and they lose, I'm
23 obviously in a competitive advantage for getting
24 any agreements, and that would be true of almost
25 anyone"?

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1 A. That's why people settle, but
2 you've settled, too, so I have no competitive
3 advantage.

4 Q. And that was --

5 A. You have a settlement.

6 Q. And that was your testimony on July
7 18, 1997; was it not?

8 A. Correct.

9 Q. And those were accurate readings of
10 the questions and answers you were asked?

11 A. Yes.

12 MR. VAUGHAN: Why don't we take a
13 break for just a minute.

14 (Plaintiffs' Exhibits 1365-1367
15 were marked for identification.)

16 THE COURT REPORTER: We are on the
17 record now.

18 MR. VAUGHAN: Wait just a minute.

19 (Discussion off the record.)

20 BY MR. VAUGHAN:

21 Q. Mr. LeBow, let me show you what we
22 have marked as LeBow Exhibits 1365, 1366 and
23 1367.

24 A. All right.

25 Q. Can you identify those documents?

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1 A. Yes. They are documents from
2 Philip Morris to Liggett regarding the payment of
3 attorneys' fees.

4 Q. And specifically, the payment of
5 attorneys' fees with respect to Mr. Kearney and
6 Latham & Watkins?

7 A. That's correct.

8 Q. Document 1365 and 1366 appear to
9 contain signatures for Liggett and Brooke Group;
10 is that correct?

11 A. Yes.

12 Q. Did you sign 1365?

13 A. Sixty-five, no; no, I didn't sign
14 it.

15 Q. Did someone -- did you sign any of
16 the three documents?

17 A. Yes, I signed 1366.

18 Q. Okay. Thirteen sixty-six is which
19 document?

20 A. The October 10th document.

21 Q. Yeah.

22 MR. SILBERFELD: Could we have a
23 clarification, because I'm now lost as to which is
24 1365, 66 and 67.

25 MR. VAUGHAN: Apparently, they
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1 were -- probably my error, but they were marked
2 in -- not in chronological order. I intended for
3 them to be in chronological order, but I just
4 realized when he answered that question that they
5 probably were not.

6 MR. SILBERFELD: Yeah. Which is
7 which?

8 BY MR. VAUGHAN:

9 Q. Thirteen sixty-five is which letter
10 Mr. LeBow?

11 A. The June 28th.

12 Q. Okay. Thirteen sixty-six is the
13 October 10th?

14 A. And 67 is the March 20th.

15 MR. SILBERFELD: Okay. Thank you.

16 BY MR. VAUGHAN:

17 Q. And were all of these documents
18 received by Liggett and Brooke?

19 A. Yes.

20 Q. Mr. LeBow, when you undertook to
21 negotiate the settlement of the Castano case, who
22 were the attorneys with whom you negotiated -- not
23 the Kasowitz lawyers on your side, but who were
24 the people you negotiated with?

25 A. There were a group of maybe eight
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1 or ten of them.

2 Q. Do you recall who they were?

3 A. Yes, some of them.

4 Q. Which ones do you recall?

5 A. Mr. Don Barrett, Mr. Wendell
6 Gauthier, Mr. Russ Herman, and his brother -- he
7 had a brother, Maury Herman, I believe it is. I
8 believe Joe Rice was there, I believe -- I
9 believe. I could be wrong on that. Bob Lief
10 from San Francisco, I recall.

11 That's, you know -- there were
12 others. I don't remember all their names.

13 Q. Mr. Scruggs there?

14 A. Yes, obviously, Mr. Scruggs was
15 there, yes -- well, no, he was there on behalf of
16 the Attorneys General, not on behalf of the -- on
17 behalf of the Castano group. He's not a Castano
18 lawyer, no.

19 Q. How many meetings were you involved
20 in leading up to the settlement of the Castano
21 case?

22 A. Probably four to six, in that
23 range.

24 Q. Were they all with the same people?

25 A. Sometimes, attorneys would be

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1 there; sometimes, they wouldn't, different
2 attorneys.

3 Q. Were there particular sticking
4 points in those negotiations?

5 A. Yeah, there were many sticking
6 points.

7 Q. Which ones do you recall?

8 A. I guess the biggest sticking point
9 that -- initially was the percentage of profits,
10 the money issue; money -- bad lunch.

11 Q. Was most of the discussion over
12 dollars?

13 A. No, it was over lots of other
14 detailed points, about -- you know, lot of legal
15 points, class actions, opt in, opt out -- many,
16 many issues.

17 Q. Do you recall any others at this
18 time?

19 A. In fact, let me look at the
20 agreement and I will recall some. I mean, we had
21 a lot of detail. Whatever is in the agreement, we
22 negotiated every single paragraph.

23 Q. Every provision was -- was
24 carefully debated and discussed --

25 A. Pretty much.

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1 Q. -- and negotiated?

2 A. Yes.

3 Q. When you came -- when it came time
4 to negotiate the Attorneys General settlement, did
5 you participate in those negotiations?

6 A. Yes.

7 Q. With whom did you and your group
8 negotiate?

9 A. On the other side, you mean?

10 Q. Yes.

11 A. With the Attorneys General.

12 Q. How many of them participated?

13 MR. BENSON: Mr. Vaughan, I want
14 you just to clarify which agreement you're talking
15 about.

16 MR. VAUGHAN: I meant the second.

17 MR. BENSON: The second.

18 A. Oh, the second one? Oh, I thought
19 you were -- you were talking about Castano. That
20 was the first one.

21 BY MR. VAUGHAN:

22 Q. That's what I first asked you
23 about, then I was moving to the second settlement.

24 A. That's why he asked. I'm not sure
25 what you're talking about now.

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1 The second -- now what are you
2 talking about?
3 Q. We've moved to settlement two --
4 A. Right.
5 Q. -- the one that was inked on March
6 20, 1967.
7 A. Okay. Now, what's your exact
8 question?
9 Q. With whom did -- well, first of
10 all, who in your group negotiated, you and who
11 else?
12 A. The Kasowitz firm.
13 Q. Okay. Any particular lawyers?
14 A. Yeah, Mr. Benson here and
15 Mr. Kasowitz, and Mr. Marks was involved, also.
16 Q. Who was on the other side of the
17 negotiations?
18 A. For the Attorneys General?
19 Q. Yes. Who took the lead in the
20 negotiations?
21 A. Which Attorneys General?
22 Q. Yes.
23 A. I think -- I guess I would probably
24 say Grant Woods from Arizona was the lead in
25 that -- those negotiations and Warren -- Warren

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1 and Woods pretty much.

2 Q. Were others involved, as well?

3 A. On occasion, yes.

4 Q. Were any documents shown to the
5 Attorneys General as an indication of what
6 documents you might be producing?

7 A. I don't know.

8 Q. Were any -- was any of that done in
9 your presence?

10 A. I just said, I didn't know anything
11 that was done. What kind of question is that?

12 Q. Well, if it wasn't -- was anything
13 done in your presence, any sharing of privileged
14 documents of Liggett or any other company done in
15 your presence during those negotiations?

16 MR. BENSON: Objection.

17 A. No, I don't know.

18 BY MR. VAUGHAN:

19 Q. Do you know from conversations with
20 your attorneys whether any sharing of such
21 information, either the documents or orally, the
22 contents of the documents, was done by your
23 attorneys?

24 MR. BENSON: Objection.

25 A. Repeat the question.

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1 BY MR. VAUGHAN:

2 Q. Do you know whether your attorneys
3 showed any privileged documents to anyone
4 representing the Attorneys General?

5 A. Liggett privileged documents?

6 Q. Or any other Liggett privileged
7 documents -- Liggett documents or joint defense
8 documents, during the course of the negotiations?

9 A. I think I had conversations about
10 them. Whether I was actually shown or not, I
11 don't know.

12 Q. By "conversations," you mean
13 discussions of the contents?

14 A. Right.

15 MR. VAUGHAN: Now, that might be an
16 appropriate time to see if we can reach an
17 agreement with respect to other matters.

18 MR. SILBERFELD: We would propose
19 to stipulate as follows:

20 That with respect to the prior
21 deposition or trial testimony of Mr. LeBow given
22 at other matters, to the extent that those
23 transcripts have not been referred to by
24 Mr. Vaughan's questions up to now, those portions
25 of those transcripts can be used in this case as

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1 if given here, on condition that there will be no
2 further examination of Mr. LeBow about those
3 topics, and the reason we're willing to enter into
4 that is really, frankly, for the sake of time and
5 finishing this proceeding.

6 That's agreeable to the State of
7 Minnesota and Blue Cross/Blue Sheild.

8 MR. VAUGHAN: We're willing to so
9 stipulate, provided that there's an understanding
10 that what we're talking about is the portions of
11 the -- we're stipulating that the portions of the
12 depositions that have not been asked about are the
13 ones that can be used.

14 MR. SILBERFELD: Those are the ones
15 that are the subject of this stipulation, on
16 condition that there will be no further
17 examination about them now.

18 MR. VAUGHAN: I have one other
19 question I need to ask that's unrelated to those
20 depositions. It just occurred to me, and then
21 that's -- that's it as far as we are concerned.

22 MR. SILBERFELD: As far as I'm
23 concerned, you can keep asking questions. This
24 stipulation is about the subject matter about his
25 prior testimony, about which we spent a lot of

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1 time.
2 Is that agreeable to Liggett
3 counsel?
4 MR. BENSON: Yes, it is.
5 MR. SILBERFELD: Thank you.
6 BY MR. VAUGHAN:
7 Q. Mr. LeBow, have you reached any --
8 by "you," for purposes of this question, I mean
9 you, personally; you, Brooke Group; you, BGLS, and
10 you, Liggett; have you reached any agreement with
11 Blue Cross/Blue Sheild with respect to settling
12 this Minnesota action?
13 A. No.
14 Q. Have there been any negotiations?
15 A. Not to my knowledge.
16 Q. Have any overtures been made by
17 you -- by "you," again, the plural "you," or by
18 Plaintiff, Blue Cross/Blue Sheild?
19 A. Not to my knowledge.
20 MR. VAUGHAN: That's all.
21 THE COURT REPORTER: We're going to
22 go off the record.
23 (Discussion off the record.)
24 MR. SILBERFELD: We are on the
25 record.
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1 BY MR. SILBERFELD:

2 Q. Mr. LeBow, this is my opportunity
3 to ask you some additional questions, the subject
4 matter of which was raised in your examination by
5 other counsel.

6 In that regard, let me begin by
7 focusing you back on the area where counsel asked
8 you about the drop in market share of Liggett
9 products from roughly 3 percent at one point to
10 roughly 2 percent or thereabouts at another
11 point.

12 Do you recall that?

13 A. Yes.

14 Q. Do you have an estimate for us as
15 to what the value is in dollars of 1 percent of
16 market share in the tobacco business?

17 A. Drop in sales, 1 percent would
18 be -- about -- close to 100 million dollars a
19 year.

20 Q. So, would it be fair to say that
21 Liggett's actions in making the various
22 settlements that have been made and the
23 consequences of those actions in terms of the
24 marketplace have cost Liggett something on the
25 order of 100 million dollars in sales volume?

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1 MR. VAUGHAN: Objection.

2 A. Yes, I believe that's true.

3 BY MR. SILBERFELD:

4 Q. You were asked a number of
5 questions about why it was that you did not become
6 concerned until 1995 about what your company
7 knew -- that is, Liggett -- what the documents
8 showed or what the industry is saying.

9 Is the reason that you did not
10 become concerned before 1995 is because the advice
11 that you had gotten was consistent throughout?

12 A. It was consistent from the day I
13 bought the company --

14 MR. VAUGHAN: Objection.

15 A. -- that there was no need to be
16 concerned because of preemption, and because the
17 company and the industry had never paid a penny
18 out in 40 years.

19 BY MR. SILBERFELD:

20 Q. And is another reason that you were
21 not focusing on the documents or getting into the
22 details due to the fact that you had been given
23 assurances?

24 A. By all the attorneys involved, yes.

25 MR. VAUGHAN: Objection.

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1 BY MR. SILBERFELD:

2 Q. Assurances by your in-house counsel
3 at Liggett?

4 MR. VAUGHAN: Objection.

5 A. Correct.

6 BY MR. SILBERFELD:

7 Q. Assurances by your outside counsel?

8 A. Correct.

9 MR. VAUGHAN: Objection.

10 BY MR. SILBERFELD:

11 Q. Assurances from things you'd heard
12 said by the cigarette industry?

13 MR. BENSON: Objection.

14 A. That's correct.

15 THE COURT REPORTER: I'm sorry.

16 THE WITNESS: I'm sorry.

17 THE COURT REPORTER: Please let me
18 get the objection in before you answer.

19 I didn't hear the answer.

20 A. That's correct.

21 BY MR. SILBERFELD:

22 Q. Among the things that you have
23 either seen or heard of since 1995, are some of
24 the public statements that were made over the
25 course of about a 30 or 40-year period by either

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1 the tobacco companies themselves or industry trade
2 groups on behalf of the tobacco company; is that
3 true?

4 A. That's absolutely true. I read
5 most of them, you know, I saw them in the popular
6 press.

7 Q. Let me first of all show you what's
8 been previously marked as Plaintiffs' Exhibit
9 411.

10 This is a two-page press release
11 from The Tobacco Institute dated November 3rd,
12 1963.

13 Do you see that at the top, sir?

14 A. Yes.

15 Q. Now, Liggett was a member of The
16 Tobacco Institute from 1959 onward, isn't that
17 true?

18 A. I don't know exactly when, but I
19 know they were a member for a while.

20 Q. Certainly, by this time, Liggett
21 was a member?

22 A. Yes.

23 Q. And as of 1963, the tobacco
24 industry in the person of the president of The
25 Tobacco Institute is telling the American public,

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1 quote, "The tobacco industry is convinced that
2 scientific research" -- this is in the first
3 paragraph -- "will discover the answers to
4 questions about smoking and health and the causes
5 of the diseases with which smoking has been
6 associated."

7 Have I read that correctly?

8 MR. VAUGHAN: Objection.

9 A. Yes, you have.

10 BY MR. SILBERFELD:

11 Q. And further down, the president of
12 The Tobacco Institute reaffirms a commitment that
13 had been made years earlier when Mr. Allen said
14 that "Tobacco people have a," quote, "double
15 interest," close quote, "in this matter. First as
16 human beings, we are interested in the health of
17 our fellow man; second, we have a natural interest
18 in the future welfare of our industry and of our
19 industry's customers."

20 Do you see that?

21 A. Yes, I do.

22 MR. DIESETH: Objection.

23 THE WITNESS: "Yes, I do," is the
24 answer.

25 BY MR. VAUGHAN:

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1 Q. And at the bottom of the page,
2 Mr. Allen goes on to tell the American public,
3 quote, "While the industry does not know the
4 causes of the diseases in question, Mr. Allen said
5 there are certain things we do know. We do know
6 that the theories regarding possible causes of
7 lung cancer and heart disease are in dispute among
8 scientists."

9 Do you see that, sir?

10 A. Yes, I do.

11 Q. And then further down in the page,
12 there's a quote that says, "The case against
13 smoking still rests largely on statistical
14 studies, whose meanings are questioned by leading
15 medical statisticians."

16 Do you see that, sir?

17 A. Yes.

18 Q. Did you understand that that point
19 of view as of 1963 was consistent with what the
20 industry had said, both before that time and after
21 that time?

22 MR. VAUGHAN: Objection.

23 A. I believe the industry is still
24 saying that, pretty much saying that up to this
25 point in time, except for the settlement agreement

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1 they signed which they admitted to all these
2 things? I don't understand their position at
3 all.

4 MR. DIESETH: Motion to strike.
5 BY MR. SILBERFELD:

6 Q. Let me show you what's been
7 previously been marked -- you can just start a
8 pile. There's going to be a few of these,
9 Mr. LeBow -- what's been previously marked as
10 Exhibit 304.

11 This is a document dated April and
12 May of 1958. Let me represent to you the context
13 of this.

14 It is a visit from people at
15 British and American Tobacco Company to the United
16 States, and it's a report of their trip and what
17 they learned.

18 If I could direct your attention to
19 the second page of the document, you'll see an
20 itinerary there which lists all the people that
21 the people from British-American Tobacco visited.
22 They visited people from American Tobacco -- do
23 you see that, sir?

24 A. Yes.

25 Q. They visited a couple of

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1 universities and medical schools, then they
2 visited Liggett.

3 Do you see that?

4 A. Yes.

5 MR. DIESETH: Objection. I move to
6 strike the portion of the counsel's testimony
7 regarding this document.

8 MR. SILBERFELD: I'm sorry, I
9 didn't even understand that. What did you say?

10 MR. DIESETH: I believe you had
11 represented to Mr. LeBow the context of this
12 document, and in that representation, you made
13 certain statements concerning the document, and I
14 just move to strike those.

15 BY MR. SILBERFELD:

16 Q. These individuals from
17 British-American Tobacco visited with Philip
18 Morris.

19 Do you see that?

20 A. Yes.

21 Q. They visited with TIRC; do you
22 understand that to be The Tobacco Institute
23 Research Council?

24 A. Yes.

25 Q. And if you turn the page, you see

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1 that in the introduction, the writers are saying
2 that, quote, "We sought information on the
3 following as of 1958: Number one, the extent to
4 which it is accepted that cigarette smoke causes
5 lung cancer."

6 Have I read that correctly?

7 A. Yes.

8 Q. And if you go down to the middle of
9 that page, you'll see a section entitled
10 "'Causation' of Lung Cancer"?

11 A. Uh-huh.

12 Q. Do you see that?

13 A. Yes.

14 Q. And the writers report that, quote,
15 "With one exception," an individual by the name of
16 H.S.N. Greene, "the individuals whom we met
17 believed that smoking causes lung cancer if by
18 'causation,' we mean any chain of events which
19 leads finally to lung cancer and which involves
20 smoking as an indispensable link. In the USA,
21 only Berkson, apparently, is now prepared to doubt
22 the statistical evidence, and his reasoning is
23 nowhere thought to be sound. Hueper of the
24 National Cancer Institute accepts that cigarette
25 smoke is capable of causing lung cancer, but

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1 believes that as compared with other environmental
2 carcinogens, the contribution of smoking to the
3 total mortality from lung cancer is being greatly
4 exaggerated."

5 Do you see that?

6 A. Yes.

7 Q. Is that statement as of 1958
8 consistent with your understanding as to what both
9 Liggett and industry documents show to have really
10 been known by the companies?

11 MR. DIESETH: Objection.

12 THE WITNESS: As of today, you
13 mean?

14 MR. SILBERFELD: Yes.

15 MR. VAUGHAN: Objection.

16 A. No, I don't believe that's
17 correct. I mean, I believe it's worse than this,
18 what it says here.

19 BY MR. SILBERFELD:

20 Q. Well, as of 1958 and forward, do
21 you believe that this statement is an expression
22 of what the industry really knew, not what it was
23 saying publicly, but what it really knew about
24 smoking and disease?

25 MR. DIESETH: Objection.

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1 A. After being told what's in our
2 documents, yes.

3 BY MR. SILBERFELD:

4 Q. That's what I'm talking about.

5 A. Yes, but I think it's even worse
6 than what they knew here, I mean, probably a lot
7 worse than what it says here.

8 Q. Let me show you next what's been
9 previously marked as Exhibit 412.

10 A. Sorry.

11 Q. This is another press release dated
12 January 12th, 1965, from The Tobacco Institute.

13 Do you see that, sir?

14 A. Yes.

15 Q. It basically says in the second
16 paragraph, "No new scientific data came out of
17 yesterday's conference of the National Interagency
18 Council on Smoking and Health. A number of
19 questionable assumptions were made as the basis
20 for some sensational headline statements by laymen
21 participating in the conference. The cigarette
22 industry's position has been, and is, that of
23 thoughtful, responsible consideration of all the
24 questions which have been raised regarding smoking
25 and health."

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1 Do you see that?
2 A. Yes.
3 Q. Is that statement, in your view,
4 consistent with the industry's position for 40
5 years on the question of smoking and health?
6 A. Yes, it is.
7 MR. DIESETH: Objection.
8 A. Yes, it is.
9 MR. DIESETH: Mr. LeBow, make sure
10 you wait.
11 THE WITNESS: Okay.
12 BY MR. SILBERFELD:
13 Q. Do you believe, based upon what you
14 know now about what the industry knew, that that
15 statement was truthful --
16 MR. DIESETH: Objection.
17 BY MR. SILBERFELD:
18 Q. -- when made in 1965?
19 MR. DIESETH: Excuse me.
20 Objection.
21 A. No, I don't believe it's true.
22 BY MR. SILBERFELD:
23 Q. Next, I'd like to show you what's
24 been previously marked as Exhibit 414. It is an
25 excerpt from United Features Syndicate of some
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1 articles that were published, and if I could have
2 you turn to the fifth page from the end -- do you
3 see an article there that begins, "Cigarettes and
4 Health, a New Look at the Evidence"?

5 A. Yes.

6 Q. And that's dated February 8th,
7 1968?

8 A. Yes, I see it.

9 MR. VAUGHAN: What page are you
10 on?

11 MR. SILBERFELD: The fifth one from
12 the end, Keith.

13 BY MR. SILBERFELD:

14 Q. This entire exhibit, Mr. LeBow,
15 I'll represent to you, is a series of four news
16 articles, three of which appear in the pages
17 before, the fourth one begins on the page we're
18 looking at now, and you see in the preamble to
19 this article, the title says, "Nobody has yet
20 proved smoking can be blamed for any disease,
21 tobacco industry contends"?

22 A. That's what it says.

23 Q. And then the author of this is
24 William Kloepfer, Vice President, Tobacco
25 Institute.

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1 Do you see that?

2 A. Yes.

3 Q. And he writes, "Despite the
4 assumptions and statements of the first three
5 articles in this series, the role of tobacco and
6 health is still very much in dispute," and further
7 down, "Thus far, however, nobody has been able to
8 demonstrate any substance as found in cigarette
9 smoke that is responsible for any human disease,"
10 and in the next paragraph, "The existence of an
11 association, however, does not and cannot prove a
12 cause-and-effect relationship, as all competent
13 statisticians agree."

14 If I could ask you to turn over two
15 pages, in the fourth paragraph of that page,
16 Mr. Kloepfer writes, "The evidence on smoking and
17 disease, in short, is only sufficient to warrant
18 further research. It does not provide an answer
19 to the question of whether smoking causes
20 disease."

21 Have I read all of that correctly?

22 MR. VAUGHAN: Objection.

23 A. Yes, you have.

24 MR. SILBERFELD: You're objecting
25 to whether I read it correctly?

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1 MR. VAUGHAN: I'm sorry, I probably
2 reacted too quickly. I was trying to get the
3 objection in before the answer. I've got to react
4 quickly. If all -- if the question was simply
5 whether you read it correctly, I have no
6 objection.

7 MR. SILBERFELD: Thank you very
8 much.
9 BY MR. SILBERFELD:

10 Q. As far as I read, Mr. LeBow, based
11 upon what you understand from the industry
12 documents that you have both seen and have been
13 advised of by counsel, do you believe that to have
14 been a truthful statement as of 1968?

15 A. No.
16 MR. DIESETH: Objection.

17 MR. VAUGHAN: Object.

18 A. No, I do not believe it to be a
19 truthful statement.

20 BY MR. SILBERFELD:

21 Q. Let me refer you to the last page
22 of this document.

23 In the second paragraph,
24 Mr. Kloepfer writes, "In the meantime, all
25 thinking people should be extremely skeptical of

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1 claims that cigarette smoking or not smoking is
2 the answer to cancer, heart disease -- heart
3 diseases or other diseases when there is no
4 adequate scientific evidence to support such
5 claims."

6 Based on everything you've seen, do
7 you believe that there was adequate scientific
8 evidence to show that smoking caused disease as of
9 this time?

10 MR. DIESETH: Objection.

11 MR. VAUGHAN: Objection.

12 A. I think there was absolutely -- you
13 know, a good amount of evidence -- I don't know
14 about scientific, but statistical evidence and
15 causation evidence and other types of evidence.

16 Again, not being a scientist, I
17 think one could easily have come to that
18 conclusion, as the Surgeon General did, you know,
19 prior to this point in time.

20 BY MR. SILBERFELD:

21 Q. Moving forward in time, Mr. LeBow,
22 let me show you Exhibit 416 -- sorry, Dan -- which
23 is material created by The Tobacco Institute. It
24 bears a date of December, 1970, about two years
25 after the article we just spoke about.

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1 In the second paragraph, the
2 writer, The Tobacco Institute, writes, "So far, in
3 spite of this massive effort, there are imminent
4 scientists who question whether any causal
5 relationship has been proved between cigarette
6 smoking and human disease, including lung cancer,
7 coronary heart disease or emphysema, and further
8 down in the next section, "It is true that both
9 have been and continue to be active in this field.
10 A major portion of this scientific inquiry has
11 been financed by the people who know the most
12 about cigarettes and have a great desire to learn
13 the truth, the tobacco industry."

14 And over in the far, right-hand
15 column under the section "What They Found," the
16 last sentence reads, "However, there's still a lot
17 more to be learned."

18 Do you see that?

19 A. Yes.

20 Q. And then in the next section down
21 under "The Work Should Go Forward," there are
22 eminent scientists who believe that the question
23 of smoking and health is an open one and that
24 research in this area must go forward."

25 Based on everything you've seen as

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1 of 1970, do you believe these to have been
2 truthful statements?

3 MR. DIESETH: Objection.

4 A. No, I don't believe they were
5 totally truthful.

6 BY MR. SILBERFELD:

7 Q. Next, let me show you a press
8 release of The Tobacco Institute dated March 12th,
9 1971, which is Plaintiffs' Exhibit 407 previously
10 marked.

11 In this one, in the year 1971,
12 Mr. LeBow, The Tobacco Institute writes, "The
13 cigarette industry declared today that the
14 question of smoking and health is embroiled in
15 controversy."

16 Do you believe that that's a
17 truthful statement as of 1971?

18 MR. DIESETH: Objection.

19 MR. VAUGHAN: Object.

20 A. I believe it was embroiled in
21 controversy at that point. I don't understand the
22 federal communication implications. I wasn't
23 aware of those.

24 BY MR. SILBERFELD:

25 Q. All right. Next, let me show you

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1 Exhibit 417 previously marked.

2 This is a press release from The
3 Tobacco Institute dated February 26th, 1972,
4 and it reads, in part, J.C.B. Ehringhaus, Vice
5 President and counsel for the Washington-based
6 Tobacco Institute said here today that the 1972
7 report of the Surgeon General to Congress on
8 smoking and health 'insults the scientific
9 community,' and that the 'number one health
10 problem is not cigarette smoking, but is the
11 extent to which public health officials may
12 knowingly mislead the American public.'"

13 Do you see that, sir?

14 A. Yes.

15 Q. Do you believe that that's a fair
16 and accurate representation of whether smoking
17 causes disease as of 1972?

18 MR. DIESETH: Objection.

19 A. I believe it insults the public
20 health people and the American people, not the
21 scientific community, to say things like this.

22 BY MR. SILBERFELD:

23 Q. Next, let me show you what's been
24 previously marked as Exhibit 405, and I only have
25 one other of these, and you're happy to look over

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1 my shoulder, if you want to follow along.

2 Exhibit 405, Mr. LeBow, is a
3 memorandum dated May 1, 1972.

4 Do you recognize the names of
5 Mr. Kornegay at all?

6 A. No.

7 Q. How about Mr. Panzer?

8 A. No.

9 Q. Do you know whether either of them
10 were involved in the Tobacco Institute at all?

11 A. I have no idea.

12 Q. All right. Let me direct your
13 attention to the third -- pardon me -- the second
14 paragraph.

15 It says, "For nearly 20 years, this
16 industry has employed a single strategy to defend
17 itself on three major fronts; litigation, politics
18 and public opinion."

19 Do you see that?

20 A. Yes.

21 Q. From the documents you've seen
22 since 1995 and things you've been advised of by
23 counsel, do you believe that, in fact, there was a
24 strategy for at least 20 years on the part of the
25 tobacco industry to defend itself on those three

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1 fronts, and perhaps others?

2 MR. DIESETH: Objection.

3 A. I think it went for 45 years, the
4 strategy -- another 25 years on top of this.

5 BY MR. SILBERFELD:

6 Q. And as I read the next paragraph,
7 the question I would like you to have in mind is
8 whether you believe that the strategy described in
9 what I'm about to read was, in fact, the industry
10 strategy over that period of time.

11 The memo goes on, quote, "While the
12 strategy was brilliantly conceived and executed
13 over the years helping us win important battles,
14 it is only fair to say that it is not nor was it
15 intended to be a vehicle for victory. On the
16 contrary, it has always been a holding strategy
17 consisting of creating doubt about the health
18 charge without actually denying it, advocating the
19 public's right to smoke without actually urging
20 them to take up the practice, encouraging
21 objective scientific research as the only way to
22 resolve the question of the health hazard."

23 Based on all that you've seen since
24 1995 and what you've been advised of by counsel,
25 do you believe that, in fact, the tobacco industry

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1 executed this strategy over 20 or more years?

2 MR. DIESETH: Objection.

3 A. I believe they absolutely executed
4 this strategy, plus, they decided to market to
5 other people, meaning children in this case, some
6 of them did, at least, so urging them to take up
7 the practice, so it's worse than what you, you
8 know, depicted here.

9 BY MR. SILBERFELD:

10 Q. Next, let me show you a document
11 previously marked as Plaintiffs' Exhibit 418.
12 This is a statement of The Tobacco Institute
13 entitled "The Smoking Controversy, a Perspective,
14 December, 1978."

15 If I could turn your attention to
16 the Bates numbered pages at the bottom that end in
17 572 -- do you see that, sir?

18 A. Yes.

19 Q. Near the bottom of the page,
20 there's a paragraph that begins, "It is in the
21 interest of promoting a balanced, reasonable and
22 responsive debate on the question of smoking and
23 health that the tobacco industry presents this
24 paper on," quote, "the other side," close quote,
25 comma, "concededly, the industry side."

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1 Now, if you could turn over to the
2 next page, paragraph number four begins, "The
3 belief that smoking, in fact, is the principal
4 cause of lung cancer may be diverting attention
5 from occupational and environmental factors which
6 have been found to be associated with the
7 disease."

8 Based on what you've seen and
9 company documents, and what you've been advised of
10 by counsel since 1995, do you believe that that
11 statement is truthful as of the time it was made
12 in December, 1978.

13 MR. DIESETH: Objection.

14 THE COURT REPORTER: I'm sorry, who
15 objected?

16 A. No, I don't believe it's correct.

17 BY MR. SILBERFELD:

18 Q. Do you think it's truthful?

19 A. No, I don't think it's truthful.

20 Q. Next, Exhibit 419 previously marked
21 is a press release from The Tobacco Institute
22 dated February 11th, 1982.

23 It begins, "Millions of research
24 dollars and decades of investigation have failed
25 to establish a causal link between cancer and

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1 cigarette smoke."

2 Stopping right there, if that
3 statement was made to the American public in 1982,
4 based on all that you know, do you believe that
5 that statement is misleading?

6 MR. DIESETH: Objection.

7 A. I believe it's absolutely
8 misleading.

9 BY MR. SILBERFELD:

10 Q. Do you believe it's false?

11 MR. DIESETH: Objection.

12 A. Well, I think the way they wrote
13 it, they're trying to write it as being a
14 scientific, direct link, but the word "casual"
15 means a casual link had been established as of
16 this time -- I mean, a statistical link. A link
17 had been definitely established as of 1982.

18 BY MR. SILBERFELD:

19 Q. To the extent that the person or
20 entity in the person of The Tobacco Institute
21 suggested this is a truthful statement to the
22 American people in 1982, do you believe it was
23 truthful?

24 MR. DIESETH: Objection.

25 A. No, I do not.

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1 BY MR. SILBERFELD:

2 Q. Next, I would like to show you
3 what's been previously marked as Exhibit 421.

4 Exhibit 421 is a publication of The
5 Tobacco Institute dated 1984. It's entitled
6 "Cigarette Smoking and Chronic Obstructive Lung
7 Disease, the Major Gaps in Knowledge."

8 I would like to direct your
9 attention to the bottom of the second page after
10 the cover.

11 A. Page 2?

12 Q. Yes -- actually, page 1 of the
13 numbered ones. It's the first one after the
14 cover.

15 A. First one after the cover, all
16 right.

17 Q. At the bottom, they write,
18 referring to these noncancerous lung diseases, "By
19 any name, these conditions represent a major
20 health problem in both industrial and developing
21 nations. There is much we don't know about them."

22 Do you see that, sir?

23 A. Yes.

24 Q. As of 1984, to the extent the
25 industry was making this statement to the American

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1 people, and based on all that you know, do you
2 believe that's a truthful statement?

3 MR. DIESETH: Objection.

4 A. I don't quite know on this one.
5 They're just saying it's a major health problem.
6 I don't see -- I don't see any relationship to
7 tobacco in this -- in this paragraph. I'm sorry.

8 Q. All right.

9 A. Just the statement it's a major
10 problem; yes, that seems to be truthful.

11 Q. Let me refer you to the next page
12 at the bottom where it reads, "The tobacco
13 industry has not agreed with the judgment of the
14 Surgeon General's reports that cigarette smoking
15 has been established as a cause of chronic
16 bronchitis, a causal relationship between smoking
17 and either chronic bronchitis or emphysema has not
18 been established scientifically. Statistical
19 correlation does not establish cause, it never
20 has."

21 Is that statement, based on
22 everything you know from the documents since 1995
23 that you have seen consistent with the industry
24 strategy about smoking and disease?

25 MR. DIESETH: Objection.

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1 A. Yes, it's very consistent with the
2 strategy.

3 BY MR. SILBERFELD:

4 Q. If I could direct your attention to
5 the conclusion that's before the references, the
6 page is 481 --

7 A. What's your page number?

8 Q. Four eighty-one at the bottom.

9 A. Okay.

10 Q. Are you there?

11 A. Uh-huh.

12 Q. The conclusion reads, "These
13 scientific, enigmas" -- riddles, right, that's
14 what an enigma is?

15 MR. BENSON: Objection.

16 A. Uh-huh.

17 BY MR. SILBERFELD:

18 Q. "These scientific enigmas are but
19 some of the many gaps in knowledge about cigarette
20 smoking in C-O-L-D," which was earlier defined as
21 chronic obstructive lung disease?

22 A. I see.

23 Q. "Acceptance of smoking as the major
24 cause, may only discourage the additional research
25 that is necessary to find the causes of chronic --

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1 of these chronic diseases."

2 Based upon the documents you've
3 seen and what you've learned since 1995, do you
4 believe that this was a truthful statement as of
5 this time?

6 MR. DIESETH: Objection.

7 A. That's an absurd conclusion.

8 BY MR. SILBERFELD:

9 Q. Why is that?

10 MR. DIESETH: Objection.

11 A. Why would anyone want to stop, you
12 know, research into finding the causes of these
13 things -- absolutely absurd to come out with that
14 type of conclusion.

15 BY MR. SILBERFELD:

16 Q. In the course of the documents that
17 you've seen, have you learned something in the
18 last two years, Mr. LeBow, about the role of
19 lawyers with respect to the dissemination of
20 information from within the tobacco industry?

21 A. Yes.

22 Q. And in that regard, have you
23 learned in a general sense that lawyers played a
24 key role in either disseminating information or
25 withholding it from public view?

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1 MR. DIESETH: Objection.

2 A. Yes.

3 BY MR. SILBERFELD:

4 Q. Let me show you what's been
5 previously marked as Exhibit 446.

6 MR. SILBERFELD: You're going to
7 have to call for a car, Dan, to take all this
8 home.

9 BY MR. SILBERFELD:

10 Q. Exhibit 446 is a previously marked
11 exhibit dated October, 1964. This document, like
12 the prior report, from visitors from British and
13 American Tobacco, is a report of a visit in 1964,
14 and if I could turn your attention to the third
15 page under "Introduction," it says, "We were in
16 USA from 10, September, to 15, October, 1964, and
17 had discussions with the presidents of the six
18 main cigarette firms in the USA, one ex-president
19 and several directors, the legal advisors of four
20 of the firms and another lawyer advising two of
21 the firms," and at the bottom of the page, it
22 says, "This report deals only with policy aspects
23 of smoking and health problems in the US of A."

24 I'm on the third page of the
25 document. Do you have this page? You're on the

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1 same page as me.

2 If I could turn your attention to
3 the next page, Mr. LeBow, in the middle of the
4 second paragraph, it reads, "The leadership in the
5 US smoking and health situation, therefore, lies
6 with the powerful policy committee of senior
7 lawyers advising the industry, and their policy,
8 very understandably, in effect, is," quote, "don't
9 take any chances," close quote.

10 "It is a situation that does not
11 encourage constructive or bold approaches to
12 smoking and health problems, and it also means
13 that the policy committee of lawyers exercises
14 close control over all aspects of the problems."

15 Have I read that correctly?

16 A. Yes.

17 Q. Is that statement, as of 1964,
18 consistent with your understanding of the role of
19 lawyers in the tobacco industry?

20 MR. DIESETH: Objection.

21 A. Yes.

22 BY MR. SILBERFELD:

23 Q. Let me ask you to turn to the page
24 that ends in Bates number 104.

25 A. Bates 104.

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1 Q. At the bottom of the page, there's
2 a section of the report entitled "Influence of the
3 Lawyers."

4 Do you see that?

5 A. Yes.

6 Q. It says, "In consequence of the
7 importance of the lawsuits, the main power in the
8 smoking and health situation undoubtedly rests
9 with the lawyers, and more particularly, with the
10 policy committee of lawyers."

11 On the next page after describing
12 the members of the committee, one of whom,
13 Mr. Haas, was from L&M, right?

14 A. Yes.

15 Q. It goes on to say, "This committee
16 is extremely powerful. It determines the high
17 policy of the industry on all smoking and health
18 matters, research and public relations matters,
19 for example, as well as legal matters, and it
20 reports directly to the presidents."

21 Are those statements consistent
22 with your understanding of the role of lawyers in
23 the tobacco industry at or about this time?

24 MR. DIESETH: Objection.

25 A. Yes, it is.

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1 BY MR. VAUGHAN:

2 Q. Next, I would like to show you
3 what's been previously marked as Exhibit 507. It
4 is a document on the letterhead of the
5 Brown & Williamson law department dated June 26th,
6 1967.

7 Do you see that, sir?

8 A. Uh-huh.

9 Q. And Mr. Haas is one of the
10 recipients of this document, among others; right?

11 A. Yes.

12 Q. If I could direct your attention to
13 the second page -- well, let me withdraw that. I
14 don't have any questions about that. Just put it
15 away.

16 Do you know who Dave Hardy is?

17 A. I believe he's an attorney. I
18 mean, I know of a Shook & Hardy law firm.

19 Q. Shook, Hardy & Bacon?

20 A. Yes, I don't know, just from
21 knowledge, but I don't know them at all.

22 Q. Let me cover some other quick
23 topics, and we'll be finished.

24 In the settlements that you made on
25 behalf of Liggett, both with the Castano group and

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1 with the two sets of Attorneys General, you
2 provided a mechanism whereby other tobacco
3 companies, if their shareholders approved it,
4 could get the benefits of the settlements you
5 negotiated; isn't that true?

6 A. Certain benefits.

7 Q. Yes.

8 A. They were different in both cases.
9 In the second event, they could not get, you know,
10 most of the benefits of the second settlement,
11 just some of them.

12 Q. Putting aside how much of a benefit
13 it was --

14 A. Okay.

15 Q. You negotiated on behalf of
16 yourself some benefits for the other members of
17 your industry should they choose to avail
18 themselves and take advantage of those benefits?

19 A. That's correct.

20 Q. You've made mention a number of
21 times here today about the settlement that the
22 rest of the industry made.

23 Do you recall that?

24 A. Yes.

25 Q. And you've had a chance to look at

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1 that settlement agreement, have you not?

2 A. Yes, in detail.

3 Q. And did that settlement agreement
4 provide any benefits of any kind to Liggett?

5 MR. VAUGHAN: Objection.

6 A. No, on the contrary, it provided
7 that Liggett would have to go bankrupt almost
8 immediately if that were to become law as written.
9 BY MR. SILBERFELD:

10 Q. Particularly, there is a provision
11 in the settlement agreement between all the other
12 members of the industry other than Liggett and the
13 various Plaintiff groups that talks about
14 nonparticipating companies; isn't that right?

15 A. That's correct.

16 Q. And Liggett is the only tobacco
17 company not participating in this agreement; isn't
18 that right?

19 A. The only one, the only major
20 company. There are a couple small companies
21 around.

22 Q. But in terms of a company that
23 operates on a national basis, Liggett is the only
24 one?

25 MR. VAUGHAN: Objection.

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1 THE COURT REPORTER: I'm sorry, did
2 hear an objection?

3 MR. VAUGHAN: Yes, I tried to get
4 it in.

5 A. To the best of my knowledge, yes.
6 BY MR. SILBERFELD:

7 Q. And so to the extent that there are
8 provisions in the settlement agreement between the
9 rest of the industry and certain states and
10 Plaintiff groups that talk about nonparticipating
11 companies, the only company that that would really
12 describe would be Liggett; isn't that true?

13 MR. VAUGHAN: Objection.

14 A. We believed that's what it was
15 meant to be targeted at.

16 BY MR. SILBERFELD:

17 Q. Without spending a lot of time
18 talking about the details of it, Mr. LeBow, what
19 would happen to Liggett under the nonparticipating
20 provisions of the settlement agreement between the
21 industry, on the one hand, and various states, on
22 the other?

23 MR. VAUGHAN: Objection.

24 A. If we have to become, you know,
25 subject to the nonparticipating provisions in that

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1 agreement, we would go bankrupt almost
2 immediately.

3 BY MR. SILBERFELD:

4 Q. Why?

5 A. Well, it says very clearly, we'd
6 have to put 150 percent nontax-deductible, what we
7 would normally pay into escrow for 35 years, plus
8 we'd still have to pay under our settlement
9 agreements, plus our distributors would not be
10 covered, and there's lots of other things in there
11 strictly intended to be totally punitive against
12 Liggett.

13 Q. Why was that done, do you believe?

14 A. I believe the tobacco industry has
15 a major vendetta against us for what we did, and
16 they want revenge. There's no other -- there's no
17 economic reason for that. We're a small player.
18 We only have 2 percent of the market, and we've
19 agreed -- we agreed all along to raise our prices
20 to be competitive, you know, the same as the other
21 tobacco companies, so there's no reason other than
22 a personal vendetta by the other tobacco
23 companies.

24 MR. VAUGHAN: Motion to strike.

25 BY MR. SILBERFELD:

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1 Q. When you first instructed your
2 lawyers in 1995 to explore the possibility of
3 discussing settlement, to your knowledge, had that
4 ever been done in the tobacco industry?

5 MR. VAUGHAN: Objection.

6 A. We were told by the other side that
7 not one attorney from the tobacco industry had
8 ever in 15, 20, 30 years, ever, for that matter,
9 when all these losses were going on discuss
10 anything with the other side -- never been done
11 before.

12 BY MR. SILBERFELD:

13 Q. And do you believe that to the
14 extent there's a vendetta against Liggett, it's as
15 much about the fact that you opened settlement
16 discussions as it is about the fact that you made
17 a deal?

18 MR. DIESETH: Objection.

19 A. It's about the fact that we
20 supposedly broke ranks with the united front and
21 did the right thing, and I would do it again in
22 one second.

23 MR. VAUGHAN: Move to strike.

24 BY MR. SILBERFELD:

25 Q. You were asked a number of
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1 questions about the RJR proxy fight, and one thing
2 that I don't think was made clear is your motives
3 for doing that.

4 You and Mr. Icahn were at the time
5 you initiated that fight significant shareholders
6 in RJR, were you not?

7 A. We were the second largest
8 shareholder, and on our way to becoming the first
9 largest shareholder, that's correct. We had close
10 to 20 million shares between the two of us.

11 Q. And as of the time you held the 20
12 million shares based on the stock price, what were
13 the value of your holdings, that is, you and
14 Mr. Icahn?

15 A. About 700 million dollars -- 750
16 million dollars.

17 Q. And you held 700 million dollars in
18 a company that you thought was undervalued?

19 A. That's correct, and we thought we
20 could be worth more money if the company was split
21 up, which, by the way, in the consent
22 solicitation, all the shareholders agree with us,
23 or 53 percent, I should say, of the shareholders
24 agreed with us.

25 MR. VAUGHAN: Motion to strike.

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1 BY MR. SILBERFELD:

2 Q. Did the --

3 THE COURT REPORTER: We only have
4 two minutes of tape.

5 MR. SILBERFELD: Oooh, it's so
6 enticing. We better change tapes.

7 (Brief recess.)

8 THE COURT REPORTER: We are on the
9 record.

10 BY MR. SILBERFELD:

11 Q. Mr. LeBow, with respect to the
12 testimony that you have given in this matter, both
13 yesterday and today, will you agree that that
14 testimony can be made public?

15 A. Yes, absolutely.

16 Q. All right. You have no objection
17 to letting the public know what's been said here
18 over the course of the last two days?

19 A. I have no objection.

20 Q. Of any kind?

21 A. Of any kind.

22 MR. SILBERFELD: Thank you, sir.
23 That's all I have.

24 MR. DIESETH: I'd just note for the
25 record that there have been some documents that

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1 were marked in the record that have been
2 designated as "Confidential" by the parties.

3 BY MR. VAUGHAN:

4 Q. Just a couple of issues,
5 Mr. LeBow.

6 Number one, you were asked just a
7 moment ago whether other companies could get the
8 benefits of the settlement agreements that you had
9 negotiated.

10 Do you recall that?

11 A. Certain benefits, yes.

12 Q. And they obtained those benefits
13 only if they become affiliates of Liggett and
14 Brooke; is that right?

15 A. That's correct.

16 Q. Second, with respect to the various
17 documents you were just presented, had you ever
18 seen those documents before today?

19 A. No.

20 Q. Were you familiar with the authors
21 or did you know the authors of those documents?

22 A. No, I didn't know any of the
23 authors.

24 Q. And in answering the questions that
25 were put to you, were you -- well, strike that.

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1 Have you reviewed any other
2 documents since yesterday concerning smoking and
3 health issues?

4 A. No.

5 Q. Was your basis for answering the
6 questions that were put to you with respect to the
7 documents therefore based on your personal
8 beliefs, your conferences with lawyers in the
9 Kasowitz firm, your review of the eight documents
10 released by the Court in Florida and what you have
11 read in the popular press?

12 A. That's correct.

13 Q. And on nothing else?

14 A. That's correct.

15 MR. VAUGHAN: Thank you.

16 A. And I should say, my review of
17 these documents themselves as I read them.

18 BY MR. VAUGHAN:

19 Q. And by "these documents," you mean
20 the documents that you were handed by counsel just
21 a few moments ago?

22 A. Correct.

23 MR. VAUGHAN: That's all.

24 MR. SILBERFELD: Off the record.

25 (Deposition recessed at 4:30

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1 o'clock p.m.)

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1 C E R T I F I C A T E

2 I, Sue A. Terry, RPR/CRR, hereby
3 certify that I am qualified as a verbatim
4 shorthand reporter; that I took in stenographic
5 shorthand the testimony of Liggett Group (BENNETT
6 LeBOW) at the time and place aforesaid; and that
7 the foregoing transcript is a true and correct,
8 full and complete transcription of said shorthand
9 notes, to the best of my ability.

10 Dated at New York, New York, this
11 30th day of September, 1997.

12

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14

SUE A. TERRY, RPR/CRR

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1		I N D E X	
2			
3	EXHIBITS	DESCRIPTION	MARKED
4	LeBow Ex. 1359	Transcript of LeBow, Broin Case	6
5			
6	LeBow Ex. 1360	Copy, Deposition of Bennett LeBow, 11-5-93	6
7			
8	LeBow Ex. 1361	Copy, Deposition of Bennett LeBow, 7-18-97	6
9			
10	LeBow Ex. 1362	Form 10-Q Dated 6-30-97	6
11	LeBow Ex. 1363	Castano Settlement Agreement	150
12			
13	LeBow Ex. 1364	Proxy Letter	163
14			
15	Lebow Ex. 1365-67	Documents from Philip Morris to Liggett Regarding Payment of Attorneys' Fees	190
16			

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